2727.

SUPREME COURT OF THE UNITED STATES.

No. 102.

WILLIAM BYERS, APPELLANT,

v.

FRANCIS SURGET.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Bill of Complaint,	1	5
Injunction Ordered,	26	17
Writ of Subpœna and Return,	27	17
Answer of William Byers,	29	19
Writ of Injunction and Return,	52	28
Replication to Answer,	57	31
Affidavit of Albert H. Ringo,	58	32
Order of Judge,	60	33
Affidavit of A. Fowler,	62	34
Appointment of Commissioners to take Testimony,	65	36
Argument of Cause Concluded,	68	39
Defendant's Exceptions to Depositions,	69	39
Decree,	70	40
Appeal Prayed and Allowed,	77	43
Appeal Bond,	77	44
Exhibit A.,	79	44
" B.,	82	47
" C., being Transcript of Proceedings in the case of Duncan & Co., v. Marsh,	91	51

	Original.	Print.
Exhibit D.—Deed from Webb, Sheriff, to Byers,	130	73
Exhibit E.—Part of the Answer of Wm. Byers,	158	85
" F.—Part of Byers' Answer,	202	109
Commission to take Testimony,	232	123
Interrogatories Annexed,	233	124
Deposition of John Saffold,	238	127
" " G. Witherspoon,	241	128
" " James T. Waddell,	243	129
" " George Eder,	245	130
" " James M. Tunstall,	248	132
" " William H. Morris,	250	133
" " Atrides Crow,	252	134
" " James Fortenbery,	255	135
" " John C. Pugh,	259	137
" " Reuben W. Norwood,	263	138
" " James Robinson,	266	140
" " Isaac Gray,	268	141
" " Albertine Beard,	270	142
" " Townsend Foley,	272	143
" " John Beard,	274	144
" " Elias B. Roddy,	278	145
" " B. F. Glanton,	281	147
" " William Polite,	283	148
" " Isaac D. Mooney,	285	149
" " John C. Saylors,	288	150
" " A. H. Logan,	291	151
" " Noadiah Marsh,	294	153
" " Josephus Blagg,	299	155
" " George W. Runnels,	301	156
" " John Toney,	303	157
" " Philip Sutherland,	305	158
" " William W. Tunstall,	318	159
" " Rufus Stone,	312	161
" " Thomas I. Tunstall,	314	162
" " Wm. C. Bevens,	316	163
Certificate of Commissioner,	320	165
Order of Court,	323	166
Appointment of Commissioner to take Testimony on part of Complainant,	325	167
Interrogatories,	327	168
Deposition of H. F. Fairchild,	359	182
" " W. C. Bevens,	361	183
" " Charles F. M. Noland,	367	186
" " A. W. Lyon,	369	187
" " Wm. H. Morris,	371	187
" " Noadiah Marsh,	372	188
" " Atrides Crow,	373	188
" " John Robinson,	374	189
" " Jas. J. Waddill,	376	190

	Original.	Print.
Deposition of John C. Saylors,	378	191
" " John H. T. Webb,	379	191
" " Margaret Roddy,	385	194
" " Robert Clements,	386	195
" " John Beard,	387	195
" " Samuel M. Beard,	388	196
" " Joshua Nance,	389	196
" " Thos. S. Chadwick,	390	197
" " Albert H. Ringo,	391	197
" " William Saunders,	393	198
Order of Court,	395	199
Appointment of Commissioner to take Testimony on part of Complainant,	396	200
Interrogatories,	399	201
" to Wm. H. Ringo,	401	201
Order of Court,	406	205
Appointment of Commissioner to take Testimony on part of Complainant,	408	206
Interrogatories,	410	207
Deposition of Jas. Robinson,	441	221
Order of Court,	446	223
Appointment of Commissioner to take Testimony on part of Complainant,	448	224
Interrogatories,	450	225
Deposition of Wm. B. Duncan,	453	227
Order of Court,	457	228
Interrogatories,	459	230
Deposition of Richard Counts,	461	231
Order of Court,	465	233
Interrogatories,	467	234
Deposition of John H. T. Webb,	473	234
Land Warrants,	489	246
Clerk's Certificate,	532	268

The United States of America, Eastern District of Arkansas.

Pleas before the Honorable the United States Circuit Court of the United States for the Eastern District of Arkansas, as follows, to wit, on the Chancery side of said Court.

United States of America, District of Arkansas, *ss.*

To the Honorable Peter V. Daniels, Judge of the United States Circuit Court, within and for the District of Arkansas, sitting in Chancery:

Humbly complaining, showeth unto your Honor, your orator, Francis Surget, a citizen and resident of the County of Adams, and State of Mississippi, that heretofore and during the year of our Lord one thousand eight hundred and thirty-five (1835), your orator entered and purchased of the Government of the United States, at their land office established at Batesville, in the State of Arkansas, together with divers others, the following described tracts or parcels of land, lying and being situate in the County of Jackson, and State of Arkansas, and known and designated on the plats of the public surveys of the United States as fractional section No. Four (4), containing five hundred and sixty-four $\frac{69}{100}$ acres; section No. (9) Nine, containing six hundred and forty acres, and section No. Seven (7), containing six hundred and forty acres; all in Township No. Twelve north, of Range No. Two west. Also section No. (10) Ten, containing six hundred and forty acres, and section No. Fifteen (15), containing six hundred and forty acres, both in Township No. Twelve (12) north, of Range No. Three (3) west, as will more fully appear by reference being had to the patents of the United States, issued for the same to your orator, and herewith filed as a part of this your orator's bill of complaint. Your orator would further represent and show unto your Honor, that on or about the 10th day of November, A. D. 1835, one John Ker, Stephen Duncan, William B. Duncan, and your orator, by and under their partnership name, firm, and style of "William B. Duncan and Company," entered and purchased of the Government of the United States, at the said land office at Batesville, in the State of Arkansas aforesaid, together with divers other tracts or parcels of land, the following described tracts, lots, and parcels of land, lying and being situate in the said County of Jackson, and known and designated on the plats of the public surveys of the United States, as section No. Nine (9), (except the east half of northeast quarter), containing five hundred and sixty acres; the south half of section No. Ten (10), containing three hundred and twenty acres; section No. Fifteen (15), containing six hundred and forty acres; section No. Seventeen (17), containing six hundred and forty acres; section No. Twenty-two (22), containing six hun-

dred and forty acres; section No. Eight (8), containing six hundred and forty acres; section No. Twenty-nine (29), containing six hundred and forty acres; fractional section No. Thirty (30), containing six hundred and twenty-nine $\frac{8}{100}$ acres; fractional section No. One (1), containing six hundred and forty-one $\frac{8}{100}$ acres; the east half of section No. Two (2), containing three hundred and eighteen $\frac{6}{100}$ acres; The southwest quarter of fractional section No. Four (4), containing one hundred and sixty acres; section No. Eighteen (18), containing six hundred and twenty-nine $\frac{8}{100}$ acres; section No. Nineteen (19), containing six hundred and thirty-one $\frac{8}{100}$ acres; and fractional section No. Five (5), (except the east half of northeast quarter), containing five hundred and sixty-three $\frac{8}{100}$ acres; *all* in Township No. Eight north, and of Range No. Three (3) west: and also section No. Thirty, containing six hundred and forty-three $\frac{5}{100}$ acres; section No. Twenty-four (24), containing six hundred and forty acres; section No. Thirty-six (36), containing six hundred and forty acres; section No. Twenty, containing six hundred and forty acres (640), and section No. Eight (8), containing six hundred and forty acres; all in Township Seven (7) north, of Range No. Three (3) west. Your orator would further represent and show unto your Honor, that after the making of the said entries and purchases of said lands by the said "William B. Duncan and Company," of the said several tracts of land above stated, and before the issuing of the patents by the Government of the United States therefor, the said partnership existing between the said John Ker, Stephen Duncan, William B. Duncan, and your orator, to wit, on or before the 8th day of June, A. D. 1836, was, by mutual consent of partners thereto, dissolved and terminated, and that each and every part and parcel of the property, both real and personal, belonging to or in anywise appertaining to the said firm of William B. Duncan & Co., was, during said year 1836, devised, allotted, and conveyed and set over, to each individual member thereof, according to their respective interests and afterwards held possessed and in severalty by the said individual member of the said firm of William B. Duncan & Co. That during said year of 1836, the precise days not now recollected, the certificates of purchase issued by the Receiver of the said land office at Batesville, Arkansas, to the said William B. Duncan & Co., at the time of making said entries of land, as hereinbefore stated, to the following described tracts of land, together with divers others, were transferred, assigned, set over, and delivered to the said Stepen Duncan, by the said John Ker, Wm. B. Duncan, and your orator, partners of said firm of Wm. B. Duncan & Co., which lands are the south half of section No. nine (9); the south half of section No. ten (10); the south half of section No. eight (8) section No. fifteen (15), section No. seventeen (17), and section No. twenty-two (22), in Township No. eight (8) north, of Range No. three (3) west; and section No. twenty (20), section No. twenty-four (24); section No. thirty-six

(36); section No. eight (8); north half of section No. seven (7); and the east half of the southeast quarter of section No. seven (7); all in Township No. seven (7) north, of Range No. three (3) west; that the certificates of purchase or entries issued to the said firm of William B. Duncan & Co., by the said Receiver at said Land Office at Batesville, at the time of making said entries by said William B. Duncan & Co., as hereinbefore stated, were by the said Stephen Duncan, John Ker, and your orator, partners of said firm as aforesaid, at the time of the dissolution of said firm, to and for the following described tracts of land, together with many others, assigned, transferred, and set over to said William B. Duncan, to wit: the south fractional half, the northwest fractional quarter, and the west half of the northeast quarter of section No. five (5); the east half of section No. two (2); the northwest quarter and the west half of the northeast quarter of section No. nine (9); section No. twenty-nine (29); north half of section No. eight (8); fractional section No. eighteen (18); fractional section No. one (1); fractional section No. thirty (30); fractional section No. nineteen (19); and the southwest quarter of section No. four (4); all in Township No. eight north, of Range No. three west; which said lands so assigned, transferred, and set over to said Stephen Duncan and William B. Duncan, as hereinbefore stated, were a part and parcel of the said lands hereinbefore described as having been entered by the said William B. Duncan & Co., at the said Land office at Batesville, Arkansas; and after making of the said transfer, by the said John Ker and your orator, and the said Stephen Duncan and William B. Duncan, to the said Stephen Duncan and the said William B. Duncan as above stated, the said William B. Duncan, and the said Stephen Duncan, held, owned, and possessed, the said lands so transferred to them as aforesaid, in severalty and in fee. Your orator further states and represents unto your Honor, that after making of the said transfers to the said William B. Duncan and Stephen Duncan as above stated, the said William and Stephen having, as your orator is informed and verily believes, and so states the fact to be, sent their transfers or assignments to the General Land Office of the United States, at Washington City, the Government thereupon issued the patents for said lands so transferred to them, the said William B. and Stephen Duncan respectively, by the said partners of the said firm of "Wm. B. Duncan & Co.," as above stated, to the said Stephen Duncan in his own right, and as assignee of the said John Ker, William B. Duncan, and your orator, and to the said William B. Duncan in his own right and as assignee of the said Stephen Duncan, John Ker, and your orator, which will fully appear by reference to said patents, which are herewith filed and prayed to be taken as part of this your orator's bill of complaint. Your orator would further represent unto your honor, that the said Stephen Duncan and the said William B. Duncan, after the making of said transfers to them respectively by the said firm of William B. Duncan

& Co., as above stated, and after the dissolution and termination of the said partnership by their respective deeds bearing date, one on the 23d day of March, A. D. 1837, and the other on the 29th day of December, A. D. 1836, bargained, sold and conveyed unto your orator in fee simple, together with divers other tracts or parcels of land, the said several tracts, lots and parcels hereinbefore described, and specially designated as transferred to them individually, by the said members of the said firm of William B. Duncan & Co., as hereinbefore stated, which said deeds of conveyance to your orator from the said Stephen Duncan and William B. Duncan for said lands, were regularly acknowledged and proven and filed for record and duly recorded in the Recorder's office of the County of Jackson and State of Arkansas, on the 5th day of December, A. D. 1837, and the 13th day of February, A. D. 1837, as will fully appear by reference to said deeds of conveyance, a certified copy of which are herewith filed, and the originals of which are ready to be produced, and prayed to be taken as a part of this your orator's bill of complaint, and marked as Exhibit A, and B, by means whereof and the said several premises, your orator states and so charges and avers the fact to be, that he became seized and possessed in fee of all and every of said tracts or parcels of land hereinbefore specially described and set forth, to wit, on the days aforesaid, and so continues seized and possessed in fee of the said several tracts and parcels of land from thence up to the present time, and that he still continues the sole owner and holder of the said lands in fee. Your orator would further represent and show unto your honor, that he is informed and believes that long after the dissolution of said partnership and the division of said property to the said members of the said firm of William B. Duncan & Co., respectively, to wit: on the 5th day of September, A. D. 1840, the said William B. Duncan caused a suit to be instituted in the Circuit Court of Jackson County, State of Arkansas, on a certain agreement and covenant of one Noadiah Marsh, against the said Marsh, by and in the name of William B. Duncan, John Ker, Stephen Duncan, and your orator, as partners trading and doing business by and under the name and style of "William B. Duncan & Co.," and that afterwards, to wit, on the 30th day of July, A. D. 1848, at and upon the trial of said action of covenant, the said Circuit Court, on the plea of bankruptcy, found against the plaintiffs, and gave judgment for the said Noadiah Marsh for costs of suit; that afterwards, to wit, on the 13th day of April, A. D. 1846, execution was issued upon said judgment for the costs of said suit, directed to the sheriff of said County of Jackson, commanding him, that of the goods and chattels, lands and tenements, of the said William B. Duncan, John Ker, Stephen Duncan, and your orator, he cause to be made the costs of said suit, which costs were taxed, and amounted to the sum of thirty-seven dollars and eighty-five cents, which said execution was, by the said sheriff of Jackson County, on the said 13th day of April, A. D. 1846,

levied upon the said several tracts of land hereinbefore mentioned and designated, and belonging to your orator, as the property of the said William B. Duncan, John Ker, Stephen Duncan. and your orator jointly; that afterwards, to wit, on the 18th day of May, A. D. 1846, the said sheriff offered and sold the said several tracts of land so levied upon, as aforesaid, for the sums and in the following manner, to wit: to one William Byers, the southwest quarter of section 18, Township 8 north, Range 3 west, containing one hundred and sixty acres, for the sum of twelve and a half cents; the northwest quarter of section 18, Township 8 north, Range 3 west, containing 160 acres, for the sum of twelve and a half cents; the west half of the northeast quarter of section 18, Township 8 north, Range 3 west, containing 80 acres, for 12½ cents; the west half of the southeast quarter of section 18, Township 8 north, Range 3 west, containing 80 acres, for 12½ cents; southeast quarter section 9, containing 160 acres, for 12½ cents; the southeast quarter of section 10, 160 acres, for 12½ cents; the southwest quarter of section 10, 160 acres, 12½ cents; southwest quarter section 15, containing 160 acres, for 12½ cents; northwest quarter section 15, 160 acres, for 12½ cents; the northeast quarter section 15, 160 acres, for 12½ cents; the southeast quarter section 17, 160 acres, for 12½ cents; the northeast quarter of section 17, 160 acres, for 12½ cents; northwest quarter section 17, 160 acres, for 12½ cents; the southwest quarter section 17, 160 acres, for 12½ cents; southeast quarter section 22, containing 160 acres, for 12½ cents; southwest quarter section 22, containing 160 acres, for the sum of 12½ cents; northwest quarter and northeast quarter of section 22, containing 160 acres each, for the sum of 12½ cents each; the southeast and southwest quarters of section No. 8, containing 160 acres each, for the sum of 12½ cents each; the southeast, southwest, northeast, and northwest quarters of section 29, containing 160 acres each, for the sum of 12½ cents each; fractional section 30, containing 629 3-100 acres, for the sum of twenty-five cents; fractional section No. 1, containing 641 6-100 acres, for the sum of 25 cents; the northeast and southeast quarters of section No. 2, containing 160 acres each, the sum of 12½ cents each; northeast, northwest, southwest, and southeast quarters of section No. 19, containing 160 acres each, for the sum of 12½ cents for each quarter; northwest and northeast quarters of section No. 8, containing 160 acres each, for the sum of 12½ cents each; fractional section No. 5, containing 563 82-100 acres, the sum of 25 cents; the northwest quarter and the west half of the northeast quarter of section No. 9, containing 160 acres, and 80 acres, for the sum of twelve and a half cents; each, and the southwest quarter of section No. 4, containing 160 acres, the sum of 12½ cents; all of which said above designated lands are in Township 8 north, of Range 3 west; and for section 30, containing 640 acres, the sum of twenty-five; northeast quarter, northwest quarter, southeast quarter, and southwest quarter of section 24,

containing 160 acres each, the sum of 12½ cents each *each;* northeast, northwest, southeast, and southwest quarters of section No. 36, containing 160 acres each, the sum of 12½ cents each; the northwest, northeast, southwest, and southeast quarters of section No. 20, containing 160 acres each, the sum of 12½ cents each; the southwest, southeast, northwest, and northeast quarters of section No. 8, containing 160 acres, the sum of 12½ cents each, all of which last-mentioned lands are in Township No. 7 north, of Range 3 west; and for section No. 4, containing 564 69-100 acres, the sum of 25 cents; section No. 7, and section No. 9, containing each 640 acres, the sum of 25 cents per section, which three last-mentioned tracts are in Township 12 north, and Range 2 west; and for section No. 10 and 15, in Township 12 north, Range 3 west, containing 640 acres each, the sum of 50 cents per section: which said several tracts of land were sold to said William Byers, as above stated; and the southwest quarter of section 9, and southeast quarter of section No. 15, in township 8 north, Range 3 west, containing 160 acres each, for the sum of 13 cents per quarter, to one Andrew J. Dougherty; all of which said several tracts of land, so sold as aforesaid, contain, in the aggregate, fourteen thousand six hundred eighty-one 39-100 acres (14,681 39-100), and were sold for the aggregate sum of nine 13-100 (9 13-100) dollars, all of which will more fully appear to your Honor, by reference being had to the record and proceedings of the said Circuit Court of Jackson County, a certified copy of which is herewith filed, and prayed to be taken as part of this, your orator's bill, and marked as Exhibit (C); which said lands so sold, your orator avers were well worth in value the sum of forty thousand dollars. Your orator would further represent and show unto your Honor, that the said suit so brought in the name of William B. Duncan and Co., against Noadiah Marsh, as above stated, was instituted at the instance of William B. Duncan, as he believes, long after the dissolution of said copartnership, and the division of said property thereto belonging amongst the respective members thereof, according to their respective rights and interests. Your orator avers that he has no recollection whatever of the institution of said suit, or of giving any authority to the said William B. Duncan to use your orator's name in said suit, or any suit against said Marsh, or that your orator, after the division of said property, had any interest whatever in the subject-matter of said suit against said Marsh; and not having an opportunity of seeing said William B. Duncan before the filing of the bill, your orator cannot undertake to say positively whether said William B. Duncan was entitled to the benefit of the entire claim against said Marsh, instituted in said suit against him, or whether said William B. Duncan considered the proceeds of said claim, if realized, subject to be distributed amongst said Stephen Duncan, John Ker, your orator, and himself. And your orator cannot undertake to state at this time whether said suit so instituted by

said William B. Duncan, against said Marsh, was for his individual interest or for the benefit of the whole of the individual members of said dissolved partnership; and your orator states, that he was wholly ignorant of the existence and pendency of said suit, and the judgment against him, until some time during the winter or spring of A. D. 1847, and your orator believes in the month of February, when, to your orator's great astonishment and surprise, he received a letter from W. H. Ringo informing of the sale of said land as above specified, which was the first intimation your orator ever had of the institution of said suit, the existence of said judgment, and the sale of said land, as above stated. Your orator would further state and show unto your Honor, that after the making of said sale by the said sheriff to the said William Byers and Andrew J. Dougherty as aforesaid, to wit, on the 1st day of September, A. D. 1846, the said sheriff, John H. T. Webb, of Jackson County, made and executed to the said William Byers his deed of conveyance of said lands so sold as aforesaid to the said Byers, and that said deed, on the 19th day of November, A. D. 1846, was duly acknowledged by the sheriff in open Court, as will fully by reference being had to said deed, a certified copy of which is herewith filed (the original not being in the possession of your orator), and prayed to be taken as a part of this your orator's bill of complaint, and marked as Exhibit (D). Your orator would further represent and state unto your Honor, that he is informed and verily believes, and so charges the fact to be, that said sale, so made by the said Sheriff of Jackson County of the said lands aforesaid, on the said 19th day of May, A. D. 1846, was made when and at a time when there was no Circuit Court open and holding at the court-house in the said County of Jackson; and after it was well known to the said Sheriff and the said William Byers, and other citizens of the said County of Jackson, and the community there around about generally, that there would not be at that time and during the term at which said execution was returnable and said sale was made any such Court holden; and after it was agreed and understood by the said Sheriff and persons interested in sales and executions, that there would be no sale made by the said Sheriff at said term of Court and time; which said sale was, as your orator avers, contrary to the statutes of the State of Arkansas, regulating the sale of property under execution, and in direct fraud of the rights and interests of your orator in the premises. Your orator further states and represents unto your Honor, that he is informed and verily believes, and so charges the fact to be, that the said William Byers (whom your orator prays may be made party defendant to this his Bill of Complaint), in pretence of acting for and in behalf of the said defendant Noadiah Marsh, and the officers of Court and other persons who were interested in the payment of the costs in said suit of W. B. Duncan & Co. v. said Marsh, but in truth and in fact, for and in behalf of his own interests, and more

especially to defraud and injure your orator in this behalf, some time during the month of April, A. D. 1846, and some two or three years after, the said William B. Duncan, the only party plaintiff that knew anything about the existence of said suit, had removed from the said State of Arkansas, to some distant country, to wit, to the State of Texas, and after the death of one William Denton, who was the only attorney employed by the said William B. Duncan in the prosecution of said suit, and at a time when there was no person interested in said suit for or on behalf of said plaintiffs therein, or who had any knowledge or information of the institution of said suit, or the existence of said judgment against said plaintiffs, who could or would possibly know or learn anything about said sale until after the same would be over, and also well knowing, as well did the said Sheriff, that your orator at any time when called on for said costs, and informed of his liability therefor, was able and would have paid without delay the costs adjudged against him (whether or not interested in said suit), caused said costs to be taxed and made out, or caused to be made and issued said execution, under which the said lands were sold as above stated; and also made out and handed, together with the said execution, a list of the said lands to the said Sheriff, and directed the said Sheriff to levy said execution upon said lands included and mentioned in the said list, and also at the same time delivered to the said Sheriff a written notice of publication of the sale of said lands so to be levied upon by said Sheriff; and that thereupon the said Sheriff proceeded to *post up said notice and advertisement of said sale*, and did sell the said lands as hereinabove stated; and that, too, after it was generally understood by the persons present, on the day of such sale, and after the said William Byers had with others agreed to suspend all sales under execution at the time (being no Court in session as above stated), in which he and they were interested; but that the said Byers, after the said agreement and general understanding of the persons then and there at the time present, and after nearly all the persons that had been there had left the place of sale, ordered and directed the said Sheriff to proceed with said sale, and sell said lands as aforesaid, all of which act and doings of the said William Byers and the said Sheriff, your orator avers are in direct fraud of the rights and interests of your orator in the premises. Your orator would further state and represent unto your Honor, that he is informed and verily believes, and so charges the fact to be, that the said William Byers, at the time of said sale so made as above stated, or some short time previous thereto, did promise and agree to give unto divers persons, whose names your orator does not know, who were desirous of purchasing some of said lands, at said sale, a portion of said lands, if they would refrain from bidding for the same at said sale, which said promise and agreement of said Byers, your orator avers, are in fraud and violation of your orator's rights and interests, and makes void the said sale as made to said Byers, by

said sheriff; your orator would further state and represent unto your Honor, and so charge the fact to be, that the said William Byers, and the said Andrew J. Daugherty, the persons to whom said lands were struck off, are residents and citizens of the State of Arkansas, and who, your orator, prays, may be made party defendants to this his bill of complaint. Your orator would further represent and show unto your Honor, that, as soon after hearing of said sale of his said lands, as aforesaid, to the said William Byers, as he well could, considering the distance from where the said Byers resides to the residence of your orator, to wit, some time during the month of March, or April, A. D. 1847, offered to pay and caused to be tendered to the said William Byers the amount of purchase-money bid and paid for said lands so sold to him, together with interest thereon, and also all the costs and expenses that said Byers had incurred touching and concerning said sale, and also to pay and compensate said Byers for drafting deeds of conveyance from said sheriff to himself, and thereupon requested and solicited the said William Byers to reconvey and relinquish to your orator whatever right or title he may or might have acquired, by said sale, to the said lands of your orator, which reasonable requests of your orator, the said Byers positively refused and declined granting or complying with, and your orator now offers to pay to the said William Byers and the said Andrew J. Daugherty, the amount of the purchase-money so bid by them for said lands, together with all interest and costs thereon, and such sums for their trouble and time connected with and relation to said sale as may be reasonable and just.

But now so it is, may it please your Honor, that the said William Byers, combining and confederating with the said Andrew J. Daugherty, and divers other persons, at present unknown to your orator (whose names, when discovered, your orator prays, he may be at liberty to insert herein with apt words to charge them as parties defendants hereto), and contriving how to wrong and injure your orator in the premises, he, the said William Byers, absolutely refuses to comply with such reasonable requests of your orator, and he, at times, pretends, that he has a complete and perfect title to the said lands, that the said sale made as aforesaid is legal and good in law and equity, and that there is no fraud upon his part, or collusion and confederacy, or combination, between him and the said Daugherty, nor any other person or persons whomsoever, to defraud, swindle, or injure your orator in the premises: whereas, your orator charges the contrary thereof to be true; and that the said sale is, and was, a direct fraud upon the rights and interests of your orator; that the said Byers caused and procured the said sale to be made, that he might defraud and swindle your orator out of his property and just rights; that the said Byers did promise to pay divers persons, unknown to your orator, to procure them from bidding for said lands; well knowing, that should any person bid for

said lands, that any one tract was worth more than the entire amount of said judgment against your orator; and that the said Byers did, and is combining with the said Daugherty, and divers other persons, to your orator unknown, to defraud and injure your orator in the premises; all which actings, doings, pretences, and refusals, are contrary to equity and good conscience; and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a Court of Equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said William Byers, and Andrew J. Daugherty, and their confederates, when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to all and singular the matters aforesaid; and that, as fully and particularly as the same were here repeated, and they and every of them distinctly interrogated thereto; and more especially, that the said confederates may, in manner aforesaid and set forth, whether or not, your orator did not enter and purchase the said lands from the United States, in his own right, and individual name, as before stated? Whether or not the said William B. Duncan & Company, did not enter and purchase from the Government of the United States, the said lands, as hereinbefore stated and alleged? Whether or not they did not know that said partnership of William B. Duncan & Co. was dissolved at the time, or in the manner as above stated? Whether or not they did not know that the said partnership property, both real and personal, were divided in the manner as above stated? Whether or not they did not know that the said individual members, after the dissolution of said partnership firm, held the property belonging to said firm in severalty, as above stated? Whether or not they do not know that your orator was, and is, the sole owner in fee simple, of the said lands, so purchased by him, from the said Stephen and William B. Duncan, as above stated, and sold at the sale by the said sheriff as aforesaid? Whether or not they do not know and believe, that at the time of the issuing of said execution and the taking place of said sale, that your orator was wholly ignorant in fact of the institution of said suit v. said Marsh, the existence of said judgment, and the issuing of said execution against your orator? Whether or not they do not know and believe that the said sale would take place when there would not be any of said plaintiffs in said suit v. Marsh present or knowing anything about said sale? Whether or not they do not know and believe that the said John Ker and Stephen Duncan were totally ignorant in fact of the existence of said judgment v. them, or of the institution of said suit v. said Marsh? Whether or not the said Byers did not furnish the said sheriff with the list of lands so sold?

Whether or not said Byers ordered out said execution? Whether or not the said Byers did not hand to said sheriff the notice of sale for said lands, at the time he gave him the execution, or at some other time? Whether or not the said Wm. B. Duncan had not long previous to said sale removed to the State of Texas? Whether or not the said Wm. F. Denton was the only attorney employed in said suit v. Marsh? Whether or not the said Denton had departed this life long previous to the day of said sale? Whether or not the said Wm. B. Duncan had removed to Texas before the rendition of said judgment? Whether or not they and each of the defendants to this bill did not know and believe that said sale would take place at a time when the party, plaintiffs in said suit, and their said attorney, and all persons interested in their behalf, would be totally ignorant of such sale until long after the same was entirely over? Whether or not they did not know and believe that your orator, if notified of the existence of such judgment and his liability for said costs, was able, willing, and would promptly and fully pay off said costs and judgment against him? Whether or not they or any person interested in behalf of said defendant, Marsh, ever called on your orator for said costs? Whether or not they do not know that any one of those tracts so sold was worth much more than the entire amount of said judgment against your orator and others? Whether or not the said Byers did not direct said sheriff to levy on the entire amount of said lands so levied on and sold, if not, what portion of them? Whether or not said defendants herein did not know and believe, long previous to the day of such sale, that there would not be any Circuit Court holden at the time? Whether or not it was not generally known amongst the community and citizens generally that there would be no Court holden at that time? Whether or not it was agreed by the sheriff and the said Byers together, with all or most of the attorneys and others then present and interested in executions and sales under them, that there was to be no sale on that day, and at the time of said sale as above stated? Whether such understanding was not general, and generally by those assembled there on that day? Whether or not the persons who were assembled there on the morning of said sale had not left the place of sale in consequence of there being no Court, and the general understanding that there would be no sales under execution that day? Whether or not the said Byers did not, after such agreement and general understanding, order said sheriff to proceed with said sale, and if he refused so to do, threaten him, said sheriff, with a suit for not selling? Whether or not the said Byers did not offer, promise, and agree to give one or sundry persons, before and at the time of said sale, a portion or parcels of said lands, provided they would not bid on and for the same at said sale? Whether or not the said persons were not induced and refrained from bidding for said lands so sold in consequence of said promise of said Byers? Whether or not your orator

did not offer to pay, and cause to be tendered to said Byers, the entire amount of the purchase-money paid by him for said lands, together with interest thereon and costs, in attending to said sale, &c.? And that the said William Byers, and Andrew J. Daugherty, and their confederates, may be compelled to make complete answer to the several matters aforesaid; and that the said sale so made by the sheriff of Jackson County of your orator's lands, may be decreed and declared to be fraudulent, and annulled, and set aside, and held for nought; and that the said deed of the said sheriff to the said William Byers may be decreed to or delivered up to your orator, and cancelled, and declared, and decreed to be fraudulent, null, and void, and of none effect; and that your orator may have such other and further relief in the premises as the nature and circumstances of this case may require, and to your honor shall seem meet and proper; and may it please your honor to grant unto your orator, not only the United States most gracious writ of injunction, issuing out of and under the seal of this honorable Court, to be directed to said William Byers and Andrew J. Daugherty, to restrain them, or either of them, from selling and disposing of said lands or any portion thereof, and also to restrain them or either of them from committing waste, spoil, or destruction of any of the timber, or other trees, growing upon said lands in question, and so sold to them as aforesaid: but also the United States most gracious writ of subpœna, to be directed to the said William Byers and Andrew J. Daugherty, thereby commanding them to be and appear before your honor, in this honorable Court, at a Court to be holden at the court-house, in the City of Little Rock, on the second Monday of April, A. D. 1848, and then and there full, true, direct, and perfect answers make to all and singular the premises, and further to stand to perform and abide such further order, direction, and decree therein, as to your honor shall seem meet; and your orator shall, as in duty bound, ever pray, &c.

WM. H. & A. H. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

The State of Mississippi, County of Adams, *ss.*

I, Francis Surget, the complainant in the above and foregoing bill of complaint, do solemnly swear that the matters and things stated in said bill, as of my own knowledge, are true, and those as upon the information and knowledge of others, I believe to be true, "so help me God."

F. SURGET.

Sworn to and subscribed before me, Samuel Wood, Clerk of the Circuit Court within and for the County aforesaid, this the 8th day of July, A.D. 1847.

[SEAL.] As witness my hand and seal of office, this the day and year above written.

S. WOOD,
Clerk.

I, Daniel Ringo, acknowledge myself security for all costs for which the plaintiff may be liable in this suit. August 19, 1847.

DANIEL RINGO. [SEAL.]

District of Arkansas.

I, Benjamin Johnson, District Judge of the United States, for the District of Arkansas, inspected the within and foregoing bill, do hereby order the Clerk of the Circuit Court of the United States, for the District aforesaid, to issue an injunction as prayed for by the within bill. Witness my hand at Little Rock, this 29th of October, A. D. 1847.

B. JOHNSON,
Judge, &c.

Filed August 19th, 1847.
Attest, WILLIAM FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Writ issued 2d Nov. 1847.
Attest, WILLIAM FIELD,
Clerk.

Upon which bill of complaint a writ of subpœna was issued, which writ is in the following words and figures, to wit:

United States of America, District of Arkansas.

[L. S.] The President of the United States to the Marshal of the Arkansas District, greeting:

You are hereby commanded to summon William Byers and Andrew J. Dougherty, if they be found within your bailiwick, to appear before the Judges of our Circuit Court of the United States, in and for the District of Arkansas, at the court-house in the City of Little Rock, sitting on the Chancery side of said Court, on the first Monday of December next, to answer Francis Surget, complainant to a bill filed and exhibited against said William Byers and Andrew J. Dougherty, defendants. And have you then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court, has caused the seal of said Circuit [L. S.] Court to be hereunto affixed, this 24th day of September, A. D. 1847, and in the 72d year of American Independence.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

Mem.—The defendants to enter their appearance in this suit in the Clerk's Office on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

WM. FIELD,
Clerk.
By JNO. T. TRIGG,
Deputy Clerk.

I certify that I executed the within writ on the within-named William Byers, near Batesville, by then and there leaving a true copy thereof at his residence, with his brother-in-law, a white man of the family of said Wm. Byers, over fifteen years of age.

I further certify that I went to the place that the within named A. J. Dougherty is said to have lived, who is not to be found. I understand has gone to Texas.

E. RECTOR,
U. S. Marshal.
By A. S. WALKER,
Deputy Marshal.

280 miles, 5c., . .	$14 00
Service, . . .	50
Copy, ...	75
	$15 25

October 12th, 1847.

Returned and filed 25th Oct. 1847.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

And at Rules, on the 3d day of January, A. D. 1848, being the first Monday of said month, in the Clerk's Office of the Circuit Court of the United States, before the Clerk of said Court, the following proceedings were had, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} Bill in Chancery.

Now at this day come the said defendants, by A. Fowler, Esq., their attorney, and file in this case the separate answer of William Byers, one of said defendants; also Exhibit E & F are therewith filed in said cause.

Attest, WM. FIELD,
Clerk.
By J. THURSTON TRIGG,
Deputy Clerk.

2736

In the Circuit Court of the United States for the District of Arkansas, in Vacation; in Chancery.

The several answer of William Byers, one of the defendants, to the Bill of Complaint of Francis Surget.

This defendant, now and all times hereafter, saving and reserving unto himself all benefit and advantage of exception, which can or may be had, or taken, to the many errors, uncertainties, and other imperfections, in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says in answer to the *two first interrogatories* in said bill contained, that he has no certain personal knowledge whether thesaid lands mentioned in said bill of complaint, or which part of them, if any, were entered in the name of the said William B. Duncan & Company, or in the name of the said complainant, or in the name of some other of the members of said company, but for the purposes of this suit he is willing to admit, and does freely and fully admit, that the whole of said lands, or the different tracts and parcels thereof, were entered by and for the benefit of said company, and in its name, or in the names of one or more of the several members of said company, to wit, the said William B. Duncan, Stephen Duncan, John Ker, and said complainant. To the *third, fourth,* and *fifth interrogatories* so propounded this defendant answering says, that of his own knowledge he knows nothing whatever about the dissolution of said partnership, or when it took place, or whether or not it does not yet exist; or whether the said partnership property, real and personal, was divided in the manner stated in said bill; or whether the said individual members thereof, after such alleged dissolution, held the said property in severalty as stated *as stated* in said bill; nor has this defendant any information or belief touching the same, further than it is derived from the said bill of complaint.

To the *sixth* interrogatory, this defendant says, that he did not know that the said complainant was the sole owner in fee simple of the said lands, as alleged in said bill, but supposed then and admits now, that the said complainant, or said company, or some one or more of said members thereof, owned said lands before they were purchased by this defendant; but denies that the said complainant owns said lands, or any part thereof now, as this defendant claims to be the owner in fee simple of all the lands he purchased at said sheriff's sale, except such parts thereof as he has since sold, and which he will make appear as hereinafter stated.

To the *seventh, eighth,* and *ninth* interrogatories, this defendant says, that he has no knowledge or belief, except *except* what is derived from said bill, whether at the time of issuing the said execution and the taking place of said sale, the said complainant was wholly ignorant in fact of the institution of said suit against said Marsh,

and of said judgment, and the issuing of said execution or not, or whether the said Stephen Duncan and John Ker were ignorant of said facts; nor did he know or have any particular belief whether any of them would be at said sale, or whether they knew anything about it, nor does this defendant deem it very material whether they knew actually of such proceedings and sale or not, as plaintiffs in law are presumed to know of the existence of all suits brought by them of judgments against them, and are bound to know of such judgments, and to pay costs adjudged against them at their own peril, when they fail in their suits.

In response to the *tenth*, *eleventh*, and *twelfth* interrogatories the said defendant answers, that after the rendition of the said judgment, this defendant being the attorney of the said Marsh, was repeatedly importuned by William J. Haggard, the then Clerk of said Jackson Circuit Court, about his costs in that suit, desiring that his costs should be paid, and urging this defendant to have his costs made; and this defendant finally told him that said complainant Ker, William B. Duncan, and Stephen Duncan had lands in that County, which he, Haggard, knew, and to issue an execution and make them; that said Haggard was sick at the time the said execution was issued, but said Haggard furnished the number of said lands from some memoranda which he had, and this defendant made a list of them on paper, and at said Haggard's request this defendant *taxed up the costs for him, he being sick, and also wrote out the execution for him at his request, and also a notice of sale to be delivered to the sheriff*, and left them all with said Haggard to be delivered to the sheriff, and to the best of the knowledge, remembrance, and belief of this defendant, he neither handed the list of the lands, the execution, nor notice of sale to the sheriff, but prepared them as aforesaid, at the request of, and left them with said clerk.

To the *thirteenth* interrogatory this defendant says, that he does not know when the said William B. Duncan removed to the State of Texas, and if he removed there at all, whether it was before or after the sale; and to the *fourteenth* interrogatory he responds that the said William F. Denton was not the only attorney of the said plaintiffs in the said suit against the said Marsh, as the records and proceedings in that cause show that Charles F. M. Noland, who was formerly a partner with the said Denton in the practice of the law, and who was at the time of the institution of said suit and rendition of said judgment a partner of the said Denton, and who has resided at Batesville, only about thirty miles distant from the place of said sale, for more than ten years last past, and still resides there, was also their attorney in that suit.

This defendant answers the fifteenth and sixteenth interrogatories, that the said William F. Denton had died previous to the day of said sale; and that he does not know whether the said William B. Duncan removed to Texas or not, either before or after the date of said judgment.

To the seventeenth interrogatory this defendant answers, that he did not know, nor had he any belief in relation thereto, that said sale would take place at a time when the plaintiffs in that suit and in said execution, and all persons interested in their behalf, would be totally ignorant of such sale until long after the same was entirely over; but he knew that the said William F. Denton would not be there, because he was previously dead, and he did not know whether the said Noland would be there or not, nor had he any particular belief on the subject.

And this defendant responds to the *eighteenth* and *nineteenth* interrogatories, that he has been informed and fully believes that the said complainant was and is able to pay the costs of said suit and judgment; but his willingness and promptness in paying the same, whether notified or not, this defendant can only judge of from the facts and circumstances as they exist, and which judgment cannot be in favor of said complainant, as a portion of said costs, as this defendant believes, are still unpaid, although another execution was issued therefor on said judgment near one year after said sale was made, and it was returned unsatisfied, and the complainant by his bill shows that he long since had notice that said judgment for costs was rendered against him and his co-plaintiffs in that suit; and this defendant admits that he never called on said complainant for said costs otherwise than by writs of execution, nor does he know that the said Marsh or any person for him ever did.

To the *twentieth* interrogatory this defendant responds, that he admits to be true that there are several of said tracts of land sold to him, any one of which ought to be worth more than the amount of said judgment, and there are others of said tracts of land which this defendant is informed and believes are worth nothing at all; and that this defendant knows of no more certain and definite mode of ascertaining the precise cash value of lands than by offering them openly and publicly to sale, after giving legal notice, to the highest bidder for cash, as said lands were offered and sold to this defendant; and if these were sold for less than said complainant esteems them to be worth, it was his own fault and neglect for permitting said judgment to stand against him and others, and for suffering said sale to take place without paying up said costs, and not a matter which should be visited on the head of this defendant, who purchased the same fairly, openly, and in strict accordance with law as he insists.

This defendant, in answer to the *twenty-first* interrogatory, states that to the best of his knowledge, remembrance, and belief, he gave no directions whatever to said sheriff as to levying said execution on the whole of said land, or any part thereof, otherwise than he has already abovestated.

And to the *twenty-second* and *twenty-third* interrogatories he answers, that he did not know and believe long previous to the day of such sale that there would not be any Circuit Court holden at the

time; nor does this defendant admit that it was generally known amongst the community and citizens generally that there would not be no Court holden at that time; nor does this defendant believe that such were the fact; but on the other hand, this defendant states on the day of said sale, and at the said sale, which took place about twelve of the clock, there were fully as many persons present as generally attend Court in said County of Jackson on the first day of the terms thereof, and fully as many at such sale as usually attend sales of like kind at that place; and before said sale took place, on that day, at the request of this defendant, the said sheriff went around through town and gave notice everywhere to the people to attend the sales of lands then about to be sold, and notified the people specially that the lands of the said complainant were then and there about to be sold, and requesting all to attend such sales; and this defendant used all other reasonable means to have as many present at said sale as possible, and at the said sale urged those present to bid for said lands, and gave it to them publicly then and there at said sale as his opinion as a lawyer that those who purchased of such lands at said sale would get a good and valid title thereto, and that such sale was conducted according to law. And this defendant further states, to the best of his knowledge, remembrance, and belief, that the Judge was expected by the bar and people generally to hold said Court; but this defendant may have heard, a day or so before the commencement of the term, that the Judge would not be in attendance at said Court, although this defendant cannot state certainly that he had so heard.

And as to the 24th, 25th, 26th, 27th, 28th, and 29th interrogatories, inquiring whether or not it was agreed by the sheriff and this defendant, together with all or most of the attorneys and others then present, and interested in executions and sales under them, that there was to be no sales that day, and at the time of said sale; and whether such understanding was not general and generally known to those assembled there on that day; and whether or not the persons, who were assembled there on the morning of said sale, in consequence of there being no Court, and the general understanding that there would be no sales under executions that day, had not gone away; and whether or not this defendant did not, after such alleged agreement and general understanding, order said sheriff to proceed with said sale, and if he refused so to do, threaten him with a suit for not selling; and whether or not this defendant did not offer, promise, and agree to give one or such persons, before and at the time of said sale, a portion or parcel of said lands, provided they would not bid on and for the same at said sale; and whether or not such persons were not induced and refrained from bidding for said lands so sold, in consequence of said alleged promise of this defendant; this defendant, answering, gives his unqualified and positive denial to each and every one of said interrogatories, and to each and every part and clause thereof; and states further, that all that he

knows, as furnishing any pretence for such interrogatories, or the allegations on which they seem to be predicated, is that on said day the said sheriff came to this defendant and Mr. Bevens, another attorney, who happened to be together at the time, and asked them if he should progress with the sales under executions which they controlled, and this defendant replied that he should expect him to sell under all the executions which he controlled, unless they should be previously paid, except one which was in a train of compromise, and said sheriff did proceed to sell under such as were not otherwise arranged; but Mr. Bevens told the sheriff that he need not sell under those which he controlled, as he and his clients were content to let the sales be suspended, or not held. And this defendant heard of no other arrangement of the kind whatever.

And to the 30th and last interrogatory, this defendant answers as said alleged tender, that he was informed by Mr. Fairchild, of Batesville, where this defendant keeps his office, and near to which he resides, that said complainant had caused to be sent to him fifty dollars, to be tendered to this defendant, and a Mr. Ringo, of Helena, also informed this defendant of the same, and asked this defendant if he required a formal tender of such money, or would thereafter and insist on it; and this defendant replied that he did not then, nor would he afterwards insist on such formal tender; nor does he now insist on the same, as to the said sum of fifty dollars. And no other tender was ever made to this defendant.

And this defendant, further answering, as to the allegations of said bill, says, that he was frequently informed, and it was so generally understood in Arkansas, and this defendant believes it to be true, that all of said firm of William B. Duncan & Co. engaged in land speculations in Arkansas, were non-residents of the State and District of Arkansas, except the said William B., who resided in said State and District, and was the ostensible agent, and to the public appeared to have the entire control of all the business of said firm, of every description in said State and District, and such was and is and has been the unbroken belief of this defendant on the subject.

And this defendant, further answering, claims, that he is the lawful owner, and has a good and valid title, and absolute right of possession, and an estate in fee simple, to all of the lands hereinafter more particularly described, and situated in said County of Jackson, paramount to the claims of the said complainant, and of every other person, both in law and in equity, and states and shows to the Court here, the following concise statement of his title thereto, to wit, that on the fifth day of September, A. D. 1840, or about that time, the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade and doing business, as such, under the name and firm of William B. Duncan & Co., instituted an action of covenant in the said Circuit Court of Jackson County,

against the said Noadiah Marsh, which action was thereafter long in litigation, and stubbornly contested on both sides, and which covenant so sued on, was about and concerning the land speculations and regular business of said firm, as this defendant believes and charges to be true; and in such action such proceedings were afterwards had, that, on the thirtieth day of July, A. D. 1844, in the same Court, and by the same Court, it was considered and adjudged that the said defendant, Noadiah Marsh, go hence thereof without day, and have and recover of and from the said plaintiffs, in that suit, all his costs, in that behalf expended; that such judgment, being then still in full force and effect, on the thirteenth day of April, A. D. 1846, an execution, commonly called a writ of fieri facias, of that date, was sued out of the office of the clerk of that Circuit Court, in the name and by the authority of the said Noadiah Marsh, upon said judgment, duly attested, signed, and sealed by the Clerk of said Circuit Court, officially, and in the name of the said State of Arkansas, directed to the sheriff of said County of Jackson, and reciting therein the recovery of the judgment last aforesaid, and reciting that the said costs of the said Noadiah Marsh had been taxed to the sum of thirty-seven dollars and eighty-five cents, and commanding said sheriff, that, of the goods and chattels, lands and tenements, of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, he should cause to be made the costs aforesaid, and have the same before that Court on the nineteenth day of May, A. D. 1846, it being the second day of the then next term thereof, to satisfy the costs aforesaid, and to return that writ, to which costs indorsed on said writ, the tax and issuing fees thereof were added, making the total of thirty-nine dollars and ten cents: which said writ, on the day of the date thereof, was delivered to John H. T. Webb, who was then and continued to be, until after the return thereof, the sheriff of said County of Jackson, in due form of law, to be executed, which said sheriff, on the same day, there being no personal property of the said partners whereon to levy and make the said costs by virtue of said writ of execution, levied upon and seized, in execution, a number of tracts of land, all situated in said County of Jackson, and among them the several tracts of land which are hereinafter more particularly described (as so levied on and sold to this defendant), as the property and estate of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, as aforesaid, to satisfy said execution, and especially described each and every one of said tracts so levied on his return, indorsed on said execution, and, after having made such levy on said lands, the said John H. T. Webb, as such sheriff, after having previously given twenty days notice of the time and place of sale of all the said lands so levied on, by at least three advertisements, put up in the most public places in each township of said County of Jackson, in which advertisements the said lands were particularly described, did expose the said lands, so levied on, to sale, at the

court-house door, in the Town of Elizabeth, in said County of Jackson, on the first day of the Circuit Court of the said County of Jackson, to wit, on the eighteenth day of May, A. D. 1846, it being Monday, and between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, and on the same day for which said lands were so advertised to be sold, publicly and by auction, for ready money, to the last and highest bidder, and at and upon such sale this defendant was the last and highest bidder for the several tracts of land below described, each and every one of which tracts of land had been so levied on by the sheriff, and advertised for sale as aforesaid, at the sums thereto below separately annexed, and thereby, after paying the purchase-money therefor, became the purchaser thereof, to wit: the southwest quarter of section eighteen, township eight north, range three west, the sum of twelve and a half cents; the northwest quarter of the same section, twelve and a half cents; the west half of the northeast quarter of the same section, twelve and a half cents; the west half of the southeast quarter of the same section, the sum of twelve and a half cents; the southeast quarter of section nine, in the same township and range, one hundred and sixty acres, twelve and a half cents; the southeast quarter of section ten, in the same township and range, one hundred and sixty acres, the sum of twelve and a half cents; the southwest quarter of the same section, one hundred and sixty acres, the sum of twelve and a half cents; the southwest quarter of section fifteen, in the same township and range, one hundred and sixty acres, the sum of twelve and a half cents; the northwest quarter of the same section, one hundred and sixty acres, the sum of twelve and a half cents; the northeast quarter of the same section, one hundred and sixty acres, the sum of twelve and a half cents; the southwest quarter of section seventeen, in the same township and range, one hundred and sixty acres, for the sum of twelve and a half cents; the southeast quarter of the same section, one hundred and sixty acres, the sum of twelve and a half cents; the northeast quarter of the same section, one hundred and sixty acres, the sum of twelve and a half cents; the northwest quarter of the same section, twelve and a half cents; the southeast quarter of section twenty-two, in the same township, twelve and a half cents; the southwest quarter of the same section, twelve and a half cents; the northwest quarter of the same section, twelve and a half cents; the northeast quarter of the same section, 12½ cents; the southeast quarter of section eight, in the same township, 12½ cents; the southwest quarter of the same section, 12½ cents; the southeast quarter of section twenty-nine, in the same township, 12½ cents; the southwest quarter of the same section, 12½ cents; the northeast quarter of the same section, 12½ cents; the northwest quarter of the same section, 12½ cents; fractional section thirty, in the same township, and range six, and twenty-nine $\frac{35}{100}$ths acres, at 25 cents; fractional section one, in the

same township, six hundred and forty-one $\frac{1}{100}$ths acres, 25 cents; the northeast quarter of section two, in the same township, 12½ cents; the southeast quarter of same section, 12½ cents; the northeast quarter of section nineteen, in the same township, 12½ cents; the northwest quarter of the same section, 12½ cents; the southwest quarter of the same section, 12½ cents; the southeast quarter of the same section, 12½ cents; the northwest quarter of section eight, in the same township, 12½ cents; the northeast quarter of the same section, 12½ cents; fractional section five, in the same township, five hundred and sixty-three $\frac{1}{100}$ths acres, 25 cents; the northwest quarter of section nine, in the same township, 12½ cents; the west half of the northeast quarter of the same section, 12½ cents; section thirty, in township numbered seven north, range three west, six hundred and forty acres, at 25 cents; the northeast quarter of section twenty-four, in the same township, 12½ cents; the northwest quarter of the same section, 12½ cents; the southeast quarter of the same section, 12½ cents; the southwest quarter of the same section, 12½ cents; the northeast quarter of section thirty-six, in the same township, 12½ cents; the northwest quarter of the same section, 12½ cents; the southwest quarter of the same section, 12½ cents; the southeast quarter of the same section, 12½ cents; the northwest quarter of section twenty, in the same township, 12½ cents; the northeast quarter of the same section, 12½ cents; the southeast quarter of the same section, 12½ cents: the southwest quarter of the same section, 12½ cents; the northeast quarter of section eight, in the same township, 12½ cents; the northwest quarter of the same section, 12½ cents; the southwest quarter of the same section, 12½ cents; the southeast quarter of the same section, twelve and a half cents; section four, in township twelve north, range two west, 564 $\frac{69}{100}$ths acres, twenty-five cents; section seven, in the same township, 640 acres, at twenty-five cents; section nine in the same township, 640 acres, at twenty-five cents; section ten, in the township twelve north, of range three west, 640 acres, at fifty cents; section fifteen, in the same township, 640 acres, at fifty cents; and the southwest quarter of fractional section four, in township eight north, range three west, 160 acres, at twelve and a half cents; which said several sums of money, so bid for said lands, this defendant then and there paid to the sheriff aforesaid, and thereby became the purchaser of said lands; and which money was, by the said sheriff, duly applied to the satisfaction of so much of said judgment and costs; all of which will more fully and at large appear by reference to the record and proceedings in that suit, and the said judgment therein rendered, and said writ of execution, and the levy thereof, on said lands, and the advertisement and sale thereof, remaining of record in the said County of Jackson, and a duly authenticated copy whereof is herewith filed, and made a part of this answer, and marked "Exhibit E." And this defendant further states, that afterwards, to wit, on the

first day of September, A. D. 1846, the said John H. T. Webb, who was then still sheriff of the said County of Jackson, and as such *deed*, by deed of conveyance of that date, and reciting therein, fully and substantially, the recovery of the said judgment, the issuing of said writ of fieri facias, the levy thereof on the said lands, and the advertisements and sale thereof, to this defendant, as aforesaid, conveyed to this defendant, all of the lands so purchased by him, as aforesaid, in fee simple; which deed was duly executed in the presence of two subscribing witnesses thereto, and in due form of law; and was afterwards, in the November term of the said Circuit Court of Jackson County, to wit, on the seventeenth day of November, A. D. 1846, by the said John H. T. Webb, as such sheriff, before the same Circuit Court, duly acknowledged as his act and deed; and was, on the nineteenth day of November, A. D. 1846, filed for record, in the Recorder's office, of said County of Jackson, and duly recorded therein; all of which will more fully and at large appear by reference to the said deed of conveyance, and the official certificates of acknowledgment and registry thereto appended and annexed, which are held subject to the inspection of the Court, and said complainant, and true copies whereof are herewith filed, marked "Exhibit F," and made a part of this *answer*. Whereby this defendant became entitled, in his own right, and of an estate in fee simple, in *and* and to all of said lands so levied and sold, and conveyed to this defendant, as above stated and set forth. And he claims the protection of this Court in maintaining his said right and title against the said complainant; and that the said patents and deeds of conveyance to the said complainant, mentioned in said bill of complaint, as filed therewith, by decree of this Honorable Court, may be delivered up to this defendant; as of title to said lands, properly belonging to this defendant.

And this defendant, further answering said allegations and interrogatories, in said bill of ocmplaint contained, denies all and all manner of unlawful combination, confederacy, and fraud, wherewith he is charged in said bill of complaint, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, or avoided, or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct; and prays to be hence dismissed, with his reasonable costs, in this behalf most wrongfully sustained.

A. FOWLER,
Solicitor for William Byers.

State of Arkansas, Independence County.

Before William C. Scott, Judge of the Circuit Court of said

County of Independence, in said State, and Judge of the Third Judicial Circuit of said State.

The said defendant, William Byers, being first duly sworn, states that the annexed and foregoing answer, signed by his solicitor, and the matters and things therein contained, and stated as facts within his own knowledge, are true, and that those derived from the information of others, or from records and papers, and so stated, he believes to be true.

WILLIAM BYERS.

Subscribed and sworn to before me, Judge as aforesaid, at Batesville, in said County, on the third day of December, A. D. 1847.

W. C. SCOTT,
Judge.

Upon the foregoing answer, the said William Byers, by his solicitor, moves that the injunction awarded in said cause may be dissolved, &c.

A. FOWLER,
Solicitor.

Filed January 3d, 1848.

WM. FIELD,
Clerk.
By J. T. TRIGG,
Deputy Clerk.

United States Circuit Court, to April Term, 1848.

The United States of America, District of Arkansas, *sct.*

To William Byers and Andrew J. Dougherty.

Whereas, Francis Surgit, a citizen of the State of Mississippi, hath filed in our said Court his bill of complaint, upon the Chancery side of said Court, against William Byers and Andrew J. Dougherty, and praying, among other things, for an injunction and restraining order against the said defendants, and by the order of the Honorable Benjamin Johnson, Judge of the District Court, ordered on said bill, it is ordered that the said William Byers and Andrew J. Dougherty, and each of them, be strictly enjoined from making sale of any of the following described lands, or from committing any waste or destruction of any trees growing on any of said tracts of land, to wit, the southwest qr. of S. 18, T. 8 N., R. 3 W. containing 160 acres; N. W. ¼ Sec. 18, T. 8 N., R. 3 W., containing 160 acres; W. ½ N. E. ¼ Sec. 18, T. 8 N., R. 3 W., containing 80 acres; W. ½ S. E. ¼ Sec. 18, T. 8 N., R. 3 W., containing 80 acres; S. E. qr. Sec. 9, containing 160 acres; S. E. ¼ Sec. 10, 160 acres; S. W. ¼ Sec. 10, containing 160 acres; S. W. ¼ Sec. 15, containing 160 acres; N. W. ¼ Sec. 15, containing 160 acres; N. E. ¼ Sec. 15, containing 160 acres; S. E. ¼ Sec. 17, containing 160 acres; N. E. ¼ Sec. 17, con-

taining 160 acres; N. W. ¼ Sec. 17, containing 160 acres; S. W. ¼ Sec. 17, containing 160 acres; S. E. ¼ Sec. 22, containing 160 acres; S. W. ¼ Sec. 22, containing 160 acres; N.W. and N. E. ¼ of Sec. 22, containing 160 acres each; S. E. and S. W. ¼ of Sec. 8, containing 160 acres each; S. E., S. W., N. E., and N. W. qrs. of Sec. 29, containing 160 acres each; fractional Sec. 30, containing 629 $\frac{36}{100}$ acres; the N. E. qr. and S. E. ¼ of Sec. 2, containing 160 acres each; N. E. and N. W., S. E. and S. W. ¼ of Sec. 19, containing 160 acres each; N. W. and N. E. ¼ of Sec. 8, containing 160 acres each; fractional Sec. 5, containing 563 $\frac{80}{100}$ acres; N. W. ¼ and the west ½ of N. E. qr. of Sec. 9, containing 160 acres, and 80 acres; S. W. ¼ of Sec. 4, containing 160 acres; all of which lands are in township 8 north, of range 3 west. Sec. 30, containing 640 acres; N. E. ¼, N. W. qr., S. E. qr., and S. W. qr. Sec. 24, containing 160 acres each; the N. W., N. E., S. W., and S. E. qr. of Sec. No. 20, containing 160 acres each; and the S. W., S. E., N. W., and N. E. of Sec. No. 8, containing 160 acres each; all of which last-mentioned lands are in township No. 7 north, of range No. 3 west. Section No. 4 containing 564 $\frac{60}{100}$ acres, Sec. No. 7 and Sec. No. 9 containing each 640 acres: these last-mentioned tracts are in township No. 12, of range 2 west; Sec. No. 10, and Sec. No. 15, in township 12 north, range 3 west, containing each 640 acres: all of which several tracts of land claimed by William Byers. The S. W. qr. of Sec. 9, and the S. E. qr. of Sec. 15, in township 8 north, range 3 west, containing 160 acres each, claimed by Andrew J. Dougherty.

You and each of you are therefore strictly enjoined from selling or disposing in any manner of any portion of the above-described tracts or parcels of land, and also from committing any waste or destruction in any manner upon the timber growing upon any of said tracts or parcels of land, or in any way interfering with the same until the matters and things contained in said complainant's bill of complaint can be heard, and the further order or decree of our said Court thereupon; and you, the said William Byers and Andrew J. Dougherty, are hereby commanded to be and appear before the Judge of our said Circuit Court at the capitol, in the City of Little Rock, on the first day of our next April Term thereof, to answer to the said bill of complaint filed by the said Francis Surgit as aforesaid, and to do and perform such other and further things as may be decreed in the premises.

In testimony whereof, I have hereto set my hand as
[SEAL.] Clerk, and affixed the seal of said Court, this 2d day of Nov. 1847, and the 72d year of American independence.

WM. FIELD,
Clerk.

I do hereby certify that I served the within writ of injunction on the within-named William Byers, at his residence in the District of

Arkansas, on tenth day of February, A. D. 1848, by then and there delivering him a true copy hereof, and that the within-named A. J. Dougherty is not found in my bailiwick.

ELIAS RECTOR,
United States Marshal.
By ALEX. ADAMS,
Deputy Marshal.

Service, . .	$2 00
1 non est, . .	50
200 cur. miles, .	10 00
1 copy, . .	50
	$13 00

Filed 19th February, 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

And on the same day the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WM. BYERS and A. J. DOUGHERTY, Defendants.

This day come the said complainant by his solicitors Ringo & Trapnall, and W. H. & A. H. Ringo, and files his motion in writing that his said bill of complaint, as to the said William Byers, be taken as confessed, and that a decree *nisi* be entered against him accordingly, said Byers having failed to enter his appearance to said bill of complaint at the last preceding rule day, as he was, according to the rule of practice and the return of the subpœna, bound to do.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

Which motion is in the words and figures following, to wit:

United States of America, District of Arkansas.

In the United States Circuit Court, on the Chancery side thereof.
In Vacation, January 3d, A. D. 1848.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and
ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

And now on this day comes the said complainant, by his solicitors, and moves that the said bill of the said complainant as to the said

defendant, William Byers, be taken as confessed, and that a decree nisi be entered against him accordingly, the said Byers having been served with a subpœna according to law, and more than twenty days previous to the last preceding rule day, according to the rules of practice in such cases made and provided, and he having failed to enter his appearance to the said complainant's bill of complaint on or before the last preceding rule day, as he was by law bound to do.

RINGO & TRAPNALL, and
W. H. & A. H. RINGO,
Solicitors for Complainant.

Filed 3d January, 1848.

WM. FIELD.
Clerk.
By J. T. TRIGG,
Deputy Clerk.

And on the 7th day of February, A. D. 1848, at Rules, before the Clerk of the Circuit Court of the United States for the District of Arkansas, in the office of said Clerk, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and
A. J. DOUGHERTY, Defendants.
} Bill in Chancery.

This day comes the said complainant by Ringo & Ringo and Ringo & Trapnall, his solicitors, and on motion filed herein his replication to the answer of Wm. Byers, one of the said defendants.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

Which replication is in the following words and figures, to wit:

In the Circuit Court of the United States in and for the Arkansas District. In Vacation of said Court in Chancery.

The replication of Francis Surget to the answer of William Byers, one of the defendants, to his bill of complaint, exhibited in said Court against said William Byers and one Andrew J. Dougherty. This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that he will and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant, William Byers, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto,

confessed and avoided, traversed and denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

W. H. & A. H. RINGO, and
RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 7th February, 1848.

WM. FIELD,
Clerk.
By JNO. T. TRIGG.

And at Circuit Court of the United States for the District of Arkansas, continued and holden at the court-house in the City of Little Rock, on the ninth day of May, A. D. 1848 (being at the April Term), the Honorable Benjamin Johnson, United States District Judge, present and holding said Court, the following proceedings were had, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and
ANDREW J. DOUGHERTY, Defendants. } On Bill.

At this day come the parties, by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have, and leave is hereby granted them, until the first day of January next, to take the depositions of witnesses generally before any Judge or Justice of the Peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it is further ordered, that this case be and the same is hereby set for final hearing at the next term of this Court, upon bill, answers, replication, exhibits, and testimony to be taken in this behalf, until which time this case is hereby continued.

The following is the copy of an affidavit filed in this cause, and the order of the Judge indorsed thereon, to wit:

I, Albert H. Ringo, one of the attorneys for Francis Surget, the complainant in a bill in Chancery in the Circuit Court of the United States within and for the District of Arkansas, filed on the day of A. D. 1847, against William Byers and Andrew J. Dougherty, the object of which is to cancel and set aside a sale of certain lands therein described, made on the 18th day of May, A. D. 1846, by the sheriff of Jackson County, Arkansas, to said Byers and Dougherty, being duly sworn, state on oath, that John Roddy, a citizen of Jackson County, Arkansas, is a material witness for said complainant in said suit, and that he expects to prove by said Roddy that said Byers, previous to said sale, agreed, promised, and con-

tracted, with certain persons, that he would give them some two or three sections of good land, lying in said County of Jackson, if they would not bid for or purchase any of the lands to be sold at the said sale. That said Roddy is some seventy years of age; that his health about the 10th of April, 1847, and for some months before, was very bad, since which time I have not seen or heard from him; that owing to his advanced age, and the nature of his disease, I verily believe he will not regain his health or live long, and that unless his testimony be taken soon, and before the said suit in Chancery above mentioned is brought to issue, there is great danger that it will be entirely lost, and the said complainant seriously injured.

A. H. RINGO.

Sworn to before me, J. N. Sellers, an acting Justice of the Peace in and for the County of Phillips, and State of Arkansas, this 31st day of July, A. D. 1847.

JOHN N. SELLERS,
Justice of the Peace.

Filed 19th August, 1847.

United States of America, State and District of Arkansas, *sct.*

In the United States Circuit Court, in and for the Arkansas District, in the vacation of said Court, September 21st, A. D. 1847.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } In Chancery.

On hearing the bill of complaint of said complainant, and within and foregoing affidavit read, and hearing the application founded thereupon of the said complainant, for a commission to take the testimony of John Roddy, a witness on behalf of said complainant, to be read in evidence, on the hearing of said cause; and it appearing that said witness is so aged and infirm, that said complainant is in great danger of losing the benefit of the testimony of said witness, unless his deposition shall be taken without delay: Therefore, on consideration of the premises, ordered, that Isaac Baker be, and he is hereby appointed a commissioner to take the testimony of said John Roddy, and the Clerk of this Court is hereby directed to issue the commission usual and proper in such case. Witness my hand, at Little Rock, in the State and District aforesaid, this 21st day of September, A. D. 1847.

B. JOHNSON,
District Judge, &c.

And at a Circuit Court of the United States, in and for the District aforesaid, continued and holden at the court-house aforesaid, on the

9th day of May, A. D. 1848, the Honorable Benjamin Johnson, United States Judge, presiding, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } On Bill.

At this day came the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have, and leave is hereby granted them, until the first day of January next, to take the depositions of witnesses generally, before any judge or justice of the peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it is further ordered, that this cause be and the same is hereby set for final hearing at the next term of this Court, upon bill, answers, replications, exhibits, and testimony, to be taken in this behalf, until which time this cause is hereby continued.

And whereas, at a Circuit Court of the United States for the District aforesaid, begun and holden on the 9th day of April, A. D. 1849, at the court-house aforesaid, present the Honorable Benjamin Johnson, Judge, presiding and holding said Court, the following further proceedings were had in this cause, to wit:

FRANCES SURGET, Complainant,
v.
WILLIAM BYERS and A. J. DOUGHERTY, Defendants. } Chancery.

This day comes the said defendant, Byers, by A. Fowler, Esq., his solicitor, and files his motion in writing for an enlargement of the time for taking testimony in this cause; whereupon it is ordered, that the time for that purpose be accordingly *be* allowed, for six months from this date.

Which motion is in the following words and figures, to wit:

In the Circuit Court of the United States for the District of Arkansas. In vacation.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } Chancery.

Absalom Fowler, solicitor for the said defendant, William Byers (the other defendant not having appeared or been served with pro-

cess), states, that at the last term of the Circuit Court, this cause was set down for final hearing at the next term, upon issue on the answer of the said Byers, and an order made for the parties to take depositions by the first day of January, A. D. 1849; that in the opinion of this affiant, the whole burden of proof rested upon the said complainant, and believing also, that the said order for taking testimony was irregular, and would prove inoperative, no steps were taken to procure evidence, on the part of the said Byers; that late in the past year, as this affiant has been informed, the said complainant commenced taking his testimony, and when it was too late for the said Byers to take the regular steps for procuring testimony on his part, such as would be necessary or proper for his defence; and without leave to take testimony to rebut or explain such as may have been taken by the said complainant, this affiant believes that injustice may be done to the said Byers, his client, on the hearing of said cause.

A. FOWLER.

Subscribed and sworn to by the said Absalom Fowler, in the County of Pulaski, State of Arkansas, before me, on the eighth day of January, A. D. 1849.

WILLIAM H. FEILD,
Judge of Circuit Court, Arkansas.

And upon the foregoing cause shown the said William Byers prays for an enlargement of the time for taking testimony until the second Monday of April next, or until such time as may seem meet, and asks for an order to made to that effect by the Honorable Benjamin Johnson, District Judge, &c., as no delay can arise therefrom to the final hearing of said cause.

A. FOWLER,
Solicitor for William Byers.

January 8th, A. D. 1849.

"At my chamber, February 17th, 1849.
The order as above prayed for is hereby granted, and the time for taking testimony enlarged to the second Monday of April next.

BENJ. JOHNSON,
Judge, &c."

"The said Absalom Fowler states to the Court here, that the foregoing order, which came enclosed to him through the post-office, was never received until in the night of the 21st of March, 1849, when it was entirely too late, and the time utterly too short, for the said William Byers to take the necessary depositions on his part within the enlargement so granted. He therefore prays a further enlargement of time to take such depositions. April 9th, 1849.

A. FOWLER,
Solicitor."

"Filed 9th April, 1849.

WM. FIELD,
Clerk.
By JOHN T. TRUGG,
Deputy Clerk."

The following is an application filed for the appointment of commissioners to take testimony in this case, to wit:

"In the Circuit Court of the United States in and for the State and District of Arkansas.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and A. J. DOUGHERTY, Defendants.
} In Chancery.

To the Honorable Benjamin Johnson, United States District Judge in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court in and for the State and District aforesaid.

Your petitioner, Francis Surget, the complainant in the above-entitled suit, respectfully represents and shows to your Honor that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause, and that to establish the matters in issue in said cause, it is material to him to take the testimony of witnesses, to be read on the trial of said cause, at Batesville, in the County of Independence, also in Jackson and Phillips County, in the State of Arkansas, and in Smith County, in the State of Texas; for which purpose he desires the appointment of such commissioners as shall be necessary and proper; and respectfully suggests to your Honor that David W. Lowe is a competent and suitable person to take such testimony in the Counties of Independence and Jackson, Albert G. Underwood in the County of Phillip, and in the State of Texas the Clerk of the Circuit Court in and for Smith County, in the State of Texas; and he will ever pray, &c.

FRANCIS SURGET,
Complainant.
By RINGO & TRAPNALL,
His Solicitors."

State and District of Arkansas, *sct.*

On hearing the above petition and the application thereupon, made by said complainant, for the appointment of commissioners to take the testimony of witnesses to be read as evidence on the trial of the case in said petition mentioned: Ordered, that David W. Lowe be and he is hereby appointed commissioner to take such testimony in the Counties of Independence and *and* Jackson, in the State of Arkansas, and that

Albert G. Underwood be and he is hereby appointed commissioner to take such testimony in the County of Phillip, in said State, and that the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas, be and he is hereby appointed commissioner to take the testimony of witnesses in the State of Texas; and the Clerk of the United States Circuit Court in and for the State and District aforesaid will issue a commission to said persons respectively. Done in vacation of said Court in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge of the District of Arkansas.

Filed 8th December, 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG.

And at a Circuit Court continued and holden as aforesaid on the 17th day of April, A. D. 1849, present Hon. Benjamin Johnson, the following further proceedings were had in this case, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} Chancery.

This day came the said complainant, by his solicitor, and the said defendant also come by their solicitors, and thereupon on *on* motion of said complainant, and by consent of parties, it is ordered that the time for taking depositions in this case be and the same is hereby enlarged and extended to the first day of October next."

And at a Circuit Court of the United States in and for the District aforesaid, continued and holden at the court-house in Little Rock, the Honorable Daniel Ringo, United States District Judge, presiding the following proceedings were had, to wit:

"FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendant.
} In Chancery.

The Honorable Daniel Ringo being disqualified by reason of his connection in this cause as the attorney to hear, try, and determine the same, it is ordered that this cause be continued until the next term of this Court."

And at a Circuit Court of the United States, continued and holden on the 22d day of April, A. D. 1853, for the district aforesaid, the Honorable Peter V. Daniel, Associate Justice of the Supreme Court

of the United States, and assigned to hold the Circuit Court for said district, present and presiding, the following further proceedings were had, to wit:

"FRANCIS SURGET, Complainant,
v.
BYERS and DOUGHERTY, Defendants. } In Chancery.

This day come the said defendants by their solicitor, and on motion it is ordered that they have leave to open and publish the depositions in this cause as well on the part of the said defendant as of said complainant, which depositions were accordingly opened and filed.

And at a Circuit Court of the United States for the District aforesaid, continued and holden at the court-house in the City of Little Rock, on the 27th day of April, A. D. 1855, present the Honorable Peter V. Daniel, presiding and holding said Court, the following further proceedings were had, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY,
Defendants. } In Chancery.

This day came the parties by their solicitors, and the defendant, Byers, by his solicitor, filed his exceptions to the deposition of John H. T. Webb, taken by the complainant, in this cause; and this cause come on to be heard upon the bill, answer, replication, and proofs, and the said exception, and, the same not being closed, the further hearing was adjourned over until to-morrow morning.

And, at the same term of said Court, continued and holden on the 28th day of April, A. D. 1855, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY,
Defendants. } In Chancery.

This day came the parties, by their solicitors, and commenced the argument of this cause, and, the same not being closed was adjourned over until Monday morning next.

And, at the same term of said Court, continued and holden on the 30th day of April, 1855, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

This day came the parties, by their solicitor, and resumed the argument in this case, and, the same not being concluded, the further hearing is adjourned over until to-morrow morning.

And at a Circuit Court of the United States, for the District aforesaid, continued and holden as aforesaid, on the first day of May, 1855, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

This day came the parties, by their solicitors, and concluded the argument in this cause, whereupon the same was submitted to the Court, and taken under advisement.

The following is a copy of the exception filed by the defendant, Byers, to wit:

In the Circuit Court of the United States for the Eastern District of Arkansas. April Term, 1855.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, Defendant.
} In Chancery.

And the said defendant, by his solicitors, excepts to the deposition of John H. T. Webb, late sheriff of Jackson County, taken on the part of the complainant, because the same was written out by and is in the handwriting of A. H. Ringo, Esquire, one of the solicitors of the said complainant, as appears by a subsequent deposition of the said Webb, on file, in this cause, taken on the part of the said defendant; wherefor the said defendant prays, that the said former deposition may be suppressed, &c.

And the said defendant, further excepts to all such parts of the depositions on file, and each of them, taken by the said complainant as detail, or attempt to detail, facts on hearsay only, or matters of belief or opinion, which do not give the facts upon which such belief or opinion rests, and prays that the same be disregarded and rejected as evidence, &c.

A. FOWLER,
Solicitor for Defendant.

Filed, 27th April, 1855.

WILLIAM FIELD,
Clerk.

And at the same term of the said Circuit Court continued, and holden at the court-house in the City of Little Rock, on the 3d day of May, A. D. 1855, the Honorable Peter V. Daniel, Associate Justice of the Supreme Court, and assigned to hold the Circuit Court aforesaid, present and presiding, the following proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

This day came the complainant, by P. Trapnall and S. H. Hempstead, his solicitors, and the said William Byers, by A. Fowler and A. Pike, his solicitors, and this cause having been heard on the bill and exhibits, there referred to, marked A, B, C, and D, the original patents from the United States, covering the lands mentioned in the bill, produced, and read to the Court, on the answer of the said defendant, Byers, and Exhibits E and F, therein referred to, and the original deed mentioned in the answer, produced and read to the Court, on the replication to the answer, the depositions of H. F. Fairchild, W. C. Berny, Charles F. McArland, A. W. Lyon, William H. Morris, Noadiah Marsh, Atredes Crow, John Robinson, James S. Waddle, John C. Saylor, John H. T. Webb, Margaret Roddy, Robert Clements, John Beard, Samuel Beard, Joshua Nance, Thomas S. Chadwick, Albert H. Ringo, William Sanders, William H. Ringo, James Robinson, and William B. Duncan, taken in behalf of the complainant, and on the depositions of Richard Counts, John H. T. Webb, John Safford, J. G. Witherspoon, James I. Waddell, George Eder, James M. Fanstall, William H. Morris, Atredes Crow, James Fortenbery, John C. Pugh, Reuben W. Norwood, James Robinson, Isaac Gray, Alburton Beard, Townsend Foley, John Beard, Elias B. Reddy, B. F. Glanton, William Potill, Isaac D. Murrey, John C. Saylors, A. H. Logan, Noadiah Marsh, Josephus Bloyg, George W. Runnels, John Toney, Philip Sutherland, William W. Trinstall, and William C. Bevins, taken in behalf of the defendant, Byers, on the exceptions filed by him at the calling of the cause for hearing to the deposition of the said John H. T. Webb, taken on the part of the complainant, and on objections orally made at the hearing by said Byers, to the reading, as evidence, of the said Exhibits A and B, of the bill, being copies of the deed referred to in said bill.

And the Court being now sufficiently advised upon the record, pleadings, evidence, and papers, in the cause, and giving due consideration thereto, is of opinion, and doth think, that the purchase of the lands, by the said Byers, on the 18th day of May, 1846, mentioned and specified in the bill and answer, was fraudulent and void; and that the said sale ought be set aside, and the relief prayed for by the complainant, granted to him, and to which, in the opinion of the Court, the complainant is well entitled.

Whereupon it is ordered, adjudged, and decreed, by the Court, that the said sale, embracing the following tracts or parcels of land, situated in the County of Jackson, State of Arkansas, made on the 18th day of May, 1846, by John H. T. Webb, as sheriff of said County of Jackson, to the said William Byers, and mentioned in the bill, and answer, and pleadings in this cause, be and the same is hereby declared to be fraudulent and void; and the same is set aside and annulled, namely, the southwest quarter of section eighteen, containing one hundred and sixty acres; the northwest quarter of section eighteen, containing one hundred and sixty acres; the west half of the northeast quarter of section eighteen, containing eighty acres; the west half of the southeast quarter of section eighteen, containing eighty acres; all in township eight north, of range three west, of the (5) fifth principal meridian. The southeast quarter of section nine, contain one hundred and sixty acres; the southeast quarter of section ten, containing one hundred and sixty acres; the southwest quarter of section ten, containing one hundred and sixty acres; the southwest quarter of section fifteen, containing one hundred and sixty acres; the northwest quarter of section fifteen, containing one hundred and sixty acres; the northeast quarter of section fifteen, containing one hundred and sixty acres; the southeast quarter of section seventeen, containing one hundred and sixty acres; the northeast quarter of section seventeen, containing one hundred and sixty acres; the northwest quarter of section seventeen, containing one hundred and sixty acres; the southwest quarter of section seventeen, containing one hundred and sixty acres; the southeast quarter of section twenty-two, containing one hundred and sixty acres; the southwest quarter of section twenty-two, containing one hundred and sixty acres; the northwest quarter of section twenty-two, containing one hundred and sixty acres; the northeast quarter of section twenty-two, containing one hundred and sixty acres; the southeast quarter of section eight, containing one hundred and sixty acres; the southwest quarter of section eight, containing one hundred and sixty acres; the southeast quarter of section twenty-nine, containing one hundred and sixty acres; the southwest quarter of section twenty-nine, containing one hundred and sixty acres; the northeast quarter of section twenty-nine, containing one hundred and sixty acres; the northwest quarter of section twenty-nine, containing one hundred and sixty acres; fractional section thirty, containing six hundred and twenty-nine and three hundredths acres; fractional section one, containing six hundred and forty-one and six hundredths of acres; the northeast quarter of section two, containing one hundred and sixty acres; the southeast quarter of section two, containing one hundred and sixty acres; the northeast quarter of section nineteen, containing one hundred and sixty acres; the southwest quarter of section nineteen, containing one hundred and sixty acres; the northwest quarter of section

nineteen, containing one hundred and sixty acres; the southeast quarter of section nineteen, containing one hundred and sixty acres; the northwest quarter of section eight, containing one hundred and sixty acres; the northeast quarter of section eight, containing one hundred and sixty acres; fractional section five, containing five hundred and sixty-three and eighty-two hundredths acres; the northwest quarter of section nine, containing one hundred and sixty acres; the west half of the northeast quarter of section nine, containing eighty acres; the southwest quarter of section four, containing one hundred and sixty acres: all the latter tracts in township eight north, of range three west, of the fifth principal meridian; and section thirty, containing six hundred and forty acres; the northeast quarter of section twenty-four, containing one hundred and sixty acres; the northwest quarter of section twenty-four, containing one hundred and sixty acres; the southeast quarter of section twenty-four, containing one hundred and sixty acres; the southwest quarter of section twenty-four, containing one hundred and sixty acres; the northeast quarter of section thirty-six, containing one hundred and sixty acres; the northwest quarter of section thirty-six, containing one hundred and sixty acres; the southeast quarter of section thirty-six, containing one hundred and sixty acres; the southwest quarter of section thirty-six, containing one hundred and sixty acres; the northwest quarter of section twenty, containing one hundred and sixty acres; the northeast quarter of section twenty, containing one hundred and sixty acres; the southwest quarter of section *of section* twenty, containing one hundred and sixty acres; the southeast quarter of section twenty, containing one hundred and sixty acres; the southwest quarter of section eight, containing one hundred and sixty acres; the southeast quarter of section eight, containing one hundred and sixty acres; the northwest quarter of section eight, containing one hundred and sixty acres; and the northeast quarter of section eight, containing one hundred and sixty acres: all the said latter seventeen tracts in township seven north, of range three west, of the fifth principal meridian; and fractional section four, containing five hundred and sixty-four and sixty-nine hundredths acres; section seven, containing six hundred and forty acres: the two last tracts in township twelve north, of range two west, of the fifth principal meridian; and section ten, containing six hundred and forty acres; and section fifteen, containing six hundred and forty acres: both of said sections, in township twelve north, of range three west, of the fifth principal meridian; and section nine, containing six hundred and forty acres, in township twelve north, of range two west, of the fifth principal meridian. That the levy made in the suit of law, and that the deed made by the said John H. T. Webb, as sheriff of Jackson County, to the said William Byers, mentioned in the pleadings in this cause, be and the same is declared fraudulent and void; and

shall be set aside, annulled, and held for nought, and that any title, or apparent title to the said lands, or any of them, by virtue of said fraudulent sale, be divested out of said defendant, and out of all persons claiming by, through, or under him, and that said deed be cancelled, and the injunction heretofore granted against said Byers, be perpetuated. It is further ordered, adjudged, and decreed, that the said William Byers, do convey by deed of release, duly executed and acknowledged, with release of dower of any to said Francis Surget, the complainant, and his heirs and assigns forever, all of said lands purchased by the said William Byers, as aforesaid, with warranty only of such title as he obtained under said sale, and for quiet enjoyment as against himself, and all persons claiming or to claim under him; and it is further ordered, adjudged, and decreed, that the said William Byers, and all persons holding or claiming under him, or by, through, or under him, do forthwith surrender and yield up to the complainant, the possession of all of the said lands, and that the complainant be put in the possession thereof, and of every part and parcel thereof; and that the defendant and those holding and claiming under him, allow the complainant to receive, hold possession, and enjoy the same, without let, molestation, or hindrance; and that they, and their agents, attorneys, and solicitors, be perpetually enjoined from interfering with the possession or ownership of the complainant thereof, or any part thereof, by suit or other act or proceeding, or by virtue of any judgment, or process whatever, growing out of the sale as aforesaid. It is further ordered, adjudged, and decreed, that the complainant electing so to do, that the bill as to said Dougherty, not served with process here, nor brought into Court, be dismissed without prejudice; and it is further ordered, adjudged, and decreed, that the defendant do pay the costs of this suit.

And at a Circuit Court of the United States, in and for the District aforesaid, continued and holden at the court-house aforesaid, on the 4th day of May, A. D. 1855, the Hon. Daniel Ringo, United States Judge, presiding, the following further proceedings were had in this cause, to wit:

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

This day came the parties, by their solicitors, and the said defendant, William Byers, prays an appeal to the Supreme Court of the United States from the decree of this Court rendered against him in this cause, at a former day of this term, which appeal is granted by the Court, upon condition that the said defendant, William Byers, enter into a bond to the said complainant, with good and sufficient security, conditioned according to law, within ten days, in the sum

of fifteen hundred dollars; whereupon the said defendant presented his appeal bond, with Ebenezer Cummins and Absalom Fowler as his securities, conditioned to prosecute his said appeal to effect, and to abide such decree as may be made in the premises, which bond is now here approved by the Court, and ordered to be filed.

Which appeal bond is in the following words and figures, to wit:

Supreme Court of the United States.

WILLIAM BYERS, Appellant,
v.
FRANCIS SURGET, Appellee.
} Appeal in Chancery.

Know all men by these presents, that we, William Byers, as principal, and Absalom Fowler and Ebenezer Cummins, as his securities, are held and firmly bound unto the above-named Francis Surget, in the sum of one thousand five hundred dollars, to be paid to the said Francis Surget, his executors or administrators; to which payment well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this fourth day of May, A. D. 1855.

Whereas, the above-named William Byers hath appealed from the decision and decree of the Circuit Court of the United States, for the Eastern District of Arkansas, to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States, for the Eastern District of Arkansas, in Chancery. Now, therefore, the condition of this obligation is such, that if the above-named William Byers shall prosecute his said appeal to effect, and answer and abide by such decree as may be made in the premises, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. BYERS. [SEAL.]
A. FOWLER. [SEAL.]
E. CUMMINS. [SEAL.]

Sealed and delivered in presence of

Filed and approved, 4th day of May, 1855.
Attest, WM. FIELD, Clerk.

Exhibit A.

This deed of conveyance, made and executed this 29th day of December, 1836, between William B. Duncan, of the County of Monroe, and State of Arkansas, of the one part, and Francis Surget, of the County of Adams, and State of Mississippi, of the other part, witnesseth, that I, the said William B. Duncan, for and in considera-

tion of the sum of nine thousand nine hundred and sixty-nine dollars, to me in hand paid by the said Francis Surget, do grant, bargain, and sell to the said Francis Surget, his heirs and assigns, the following lands, situated in the State of Arkansas, and County of Jackson (viz.), the whole of section twenty-nine, containing six hundred and forty acres; the whole of fractional section thirty, containing six hundred twenty-nine and $\frac{3}{100}$ acres; the whole of section one, containing six hundred and forty-one and $\frac{6}{100}$ acres; the east half of section two, containing three hundred and twenty acres; the west half of section eighteen, and the west half of the northeast quarter and west half of the southeast quarter of section eighteen, containing together in said section four hundred and sixty-nine acres and $\frac{52}{100}$; the whole of section nineteen, containing six hundred and thirty-one acres and $\frac{8}{100}$; the whole of section eight, containing six hundred and forty acres; the south half and northwest quarter, and west half of the northeast quarter of section five, containing together five hundred and sixty-three acres and $\frac{52}{100}$; the northwest quarter and west half of the northeast quarter of section nine, containing together two hundred and forty acres; the southwest quarter of fractional section four, containing one hundred and sixty acres: all of which lands are in township eight north, of range three west, and were entered at Batesville, in the name of William B. Duncan and Company, and have been conveyed and transferred to said William B. Duncan, as his share of the lands thus entered by Stephen Duncan, Francis Surget, and John Ker, the said partners of said Wm. B. Duncan, composing said company; and I, the said William B. Duncan, do covenant with the said Francis Surget, his heirs and assigns, as follows: 1st. That I am lawfully seized of said lands; 2d. That I have a good right to convey the same; 3d. That said lands are free from incumbrance; 4th. That the said Francis Surget, his heirs and assigns, shall quietly enjoy the same; 5th. That will warrant and defend the title to said lands against all lawful claimers whatsoever. In testimony whereof, I have hereunto set my hand and seal at Natchez, the day and year above written.

WILLIAM B. DUNCAN. [SEAL.]

Attest,
A. L. GAINES,
W. A. MILLER.

County of Adams, State of Mississippi, *ss.*

Personally appeared this 29th day of December, 1837, before me, C. Rowlings, Judge of Probate of said County of Adams, the above-named Wm. B. Duncan, who declares the foregoing is his own proper deed, made for the uses and purposes therein mentioned, and that the same was by him subscribed, sealed, and delivered, in the presence of A. L. Gaines and W. A. Miller, the subscribing witnesses thereto.

In testimony whereof I have hereunto set my hand and affixed my seal at Natchez, the day and year above written.

C. RAWLINGS,
Judge as aforesaid.

The State of Mississippi, Adams County, *ss.*

I, Ralph North, Clerk of the Probate Court in and for said County, do certify that Covington Rawlings whose signature appears to the foregoing acknowledgment is and was, at the time of signing the same, Judge of said Court of Probate, duly elected, commissioned, and qualified, and all his acts as such are and ought to be entitled to full faith and credit.

[L. S.] Witness my hand and seal of office at the City of Natchez, this 29th day of December, A. D. 1836.

RAL. NORTH,
Clerk.
By S. WOOD,
Deputy Clerk.

State of Arkansas, County of Jackson, *ss.*

I, John C. Saylors, Clerk of the Circuit Court and ex-officio for the County aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office on the 13th day of February, A. D. 1837, and the same is now duly recorded in record book A, pages 61 and 62.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Litchfield, this 13th day of February, A. D. 1837.

J. C. SAYLORS,
Clerk.

State of Arkansas, County of Jackson, *ss.*

I, Atrides Crow, Clerk of the Circuit Court and ex-officio recorder in and for said County of Jackson, do hereby certify that the annexed and foregoing is a true copy from record book A, pages 61, 62, and 63.

In testimony whereof I, Atrides Crow, Clerk of the Circuit Court and ex-officio recorder in and for the County aforesaid, have hereunto set my hand and affixed the seal of said Court at my office in Elizabeth, this 1st day of July, A. D. 1847.

[L. S.]

ATRIDES CROW,
Clerk and ex-officio Recorder.

Filed 24th Sept. 1847.

WM. FIELD,
Clerk.
By J. T. TRIGG,
Deputy Clerk.

2760

Exhibit B.

This indenture, made the twenty-third day of March in the year of our Lord one thousand eight hundred and thirty-seven, between Stephen Duncan and Catharine A. Duncan his wife, of the first part, and Francis Surget, of the second part, all of the County of Adams, in the State of Mississippi, witnesseth: that the said parties of the first part, for and in consideration of one dollar to them in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged therefrom, by these presents have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, all and sundry certain parcels, lots, and tracts of land hereinafter more particular described as follows, to wit, first, the following pieces and parcels of land, as fully described by certain certificates of purchase under the hand of A. W. Lyon, Receiver, of the Receiver's office, at Batesville, in the Territory of Arkansas, in favor of William B. Duncan & Company, of Natchez, Mississippi, namely, the south half of section number nine, in Township number eight north, of Range number three west, containing three hundred and twenty acres of land, as appears by certificate as above, numbered 1094, and dated 10th November, 1835; the south half of section number ten, in Township number eight north, of Range number three west, containing three hundred and twenty acres, as appears by certificate as above, No. 1095, and dated 10th November, 1835; the whole of section number fifteen, in Township number eight north, of Range number three west, containing six hundred and forty acres, as appears by certificate as above, No. 1100, and dated as date of last; the whole of section number seventeen, in Township number eight north, of Range three west, containing six hundred and forty acres, as appears by certificate No. 1101, of date of last; the whole of section number twenty-two, in Township number eight north, of Range number three west, as appears by certificate No. 1106, of date of last, containing six hundred and forty acres; the south of section number seventeen, Township number seven north, Range number three west, containing three hundred and twenty acres, as appears by similar certificate and like date, number 1117; the east half of section number eighteen, in Township seven north, Range three west, containing three hundred and twenty acres, as appears by like certificate, of like date, No. 1119; the east half of section thirteen, Township seven north, Range three west, containing three hundred and twenty acres, as appears by like certificate of like date, No. 1120; the southwest fractional quarter of section number nineteen, Township seven north, Range three west, containing one hundred and

sixty-two and 37-100 acres, as appears by like certificate of like date, No. 1121; the whole of section twenty, Township seven north, of Range three west, containing six hundred and forty acres, as appears by like certificate of like date, No. 1122; the whole of section twenty-four, Township seven north, Range three west, containing six hundred and forty acres, as appears by like certificate of like date, No. 1123; the whole of section thirty-six, Township seven north, Range three west, containing six hundred and forty acres, as appears by like certificate of like date No. 1128; the south half of section thirteen, Township seven north, Range three west, containing three hundred and twenty acres, as appears by like certificate of like date, No. 1129; the south half of section eight, Township eight north, Range three west, containing three hundred and twenty acres, as appears by like certificate of like date, No. 1193. Second. The following pieces and parcels of land as fully described by certain certificates of *purchase* under the hand of Davis Thompson, Receiver, at the Receiver's office, at Helena, Mississippi, District Arkansas, each severally dated November 17th, 1835, namely, the northeast quarter of section number fifteen, in Township number one south, Range number two west, containing one hundred and sixty acres, as appears certificate number 2443; the east quarter of section number ten, in Township number one south, of Range number two west, containing one hundred and sixty acres, as appears by certificate number 2444; the west half of section number thirteen, Township three south, of Range number one east, containing three hundred and twenty acres, as appears by certificate number 2447; the west half of fractional section number seven, in Township number two south, of Range number three east, containing three hundred and twenty-two 27-100 acres, as appears by certificate number 2454; the west half of fractional section number eighteen, in Township number two south of Range number three east, containing three hundred and seventeen 42-100 acres, as appears by certificate number 2457; the southeast quarter of fractional section number seven, in Township number two south, of range number three east, containing one hundred and sixty acres, as appears by certificate No. 2461; the east half of section number eighteen, in Township number two south, of Range number three east, containing three hundred and twenty acres, as appears by certificate number 2466: the above described certificates of purchase being likewise made in favor of said William B. Duncan and Company, of Natchez, Mississippi.

Third. The following places and parcels of land, as fully described by certain certificates of purchase, under the hand of L. Hawkins, Receiver, at the Receiver's Office, at Helena, Mississippi District, Arkansas, each severally dated at said place, September 16th, 1835, in favor of John Ker and Company, of Natchez, Mississippi, namely: the northwest fractional quarter of fractional section number nineteen, in Township number twelve south, of Range number two west,

containing one hundred and fifty-one 20-100 acres, as appears by certificate number 2100; the west half of the southeast quarter of fractional section number eighteen, in Township number twelve south, of Range number two west, containing eighty acres, as appears by certificate number 2101; the southeast quarter of section number twelve, Township twelve south, Range three west, containing one hundred and sixty acres, as appears by certificate number 2095; the west half of fractional section number eighteen, Township twelve south, Range two west, containing three hundred and five 20-100 acres, as appears by certificate number 2096; the southwest fractional quarter of fractional section seven, Township twelve south, Range two west, containing one hundred and sixty-seven 86-100 acres, as appears by certificate 2097; the west half of northeast quarter of fractional section number eighteen, Township twelve south, Range two west, containing eighty acres, as appears by certificate number 2098; also, one-half of the surrounded hill tract, the whole thereof being held by the said parties of the first part conjointly with said John Ker, meaning hereby to convey to said party of the second part eight hundred and fifty 50-100 acres, and likewise the following pieces and parcels of land, to wit: the whole of section eight, containing six hundred and forty acres, the north half of section seven, containing three hundred and seventeen 84-100 acres; the east half of the southeast quarter of section seven, containing eighty acres, all lying and being in Township seven north, Range three west, in the district of lands subject to sale at Batesville, in the Territory of Arkansas, being the same lands mentioned in a certain certificate of sale from said William B. Duncan to Stephen Duncan, made the third day of March, A. D. 1836, and filed for record in the Recorder's Office of the County of Jackson, and Territory of Arkansas, in Record Book A., pages 48, 49, and 50. The parties of the first part hereby these presents, intending and designing to convey to the party of the second part, all their entire interest, right, title, and property in and to all and sundry, the Government lands and others entered and purchased by the said Wm. B. Duncan, in the Territory of Arkansas, for himself and company, and likewise those by John Ker, for himself and company, in said Territory; likewise intending to convey to the said party of the second part all the interest, title, and property which they have at the date of these presents to any lands or parts of land lying or being in the State of Arkansas, in the United States of America, together with all and singular the appurtenances, hereditaments, privileges and advantages whatsoever unto the above described premises belonging or in anywise appertaining; and also, all the estate, right, title, and interest, and property and claim whatsoever, either at law or in equity, of them, the said parties of the first part of, in, and to the same, to have and to hold the above granted, bargained, and described premises, with the appurtenances unto the said party of the second part, his heirs and

assigns, forever; and the said parties of the first part for themselves, their heirs, executors, and administrators, do covenant, grant, promise and agree to and with the said party of the second, his heirs and assigns, that they, the said parties of the first part, and their heirs, the above described and hereby granted premises, and every part thereof, with the appurtenances, unto the said party of the second part, and his heirs and assigns, against the said parties of the first part, and against all persons lawfully or equitably claiming or to claim said premises, or any part thereof, from or under them, or any of them, shall and will warrant and forever defend.

In witness whereof, the said Stephen Duncan and Catherine A. Duncan, his wife, the aforesaid parties of the first have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of us,

STEPHEN DUNCAN. [SEAL.]
CATHARINE A. DUNCAN. [SEAL.]

N. B.—The words "containing six hundred and forty acres," between lines 27 and 28, on first page, interlined before signed.

The State of Mississippi, Adams County, *set.*

Before me, Ralph North, Clerk of the Probate Court, appeared the within-named Stephen Duncan and Catherine A. Duncan, his wife, and severally acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year, and for the purposes therein named; and the said Catherine A. Duncan being by me examined separate and apart from her said husband, and acknowledged that she executed said deed freely and *and* voluntarily, without any fear, threat, or compulsion from her said husband.

[L. S.] In testimony whereof, I have hereunto set my hand and seal of office, the 16th day of September, 1837.

RALPH NORTH,
Clerk.

Filed in my office for record, on the fifth day of December, A. D. 1837, and the same is now duly recorded.

J. C. SAYLORS,
Clerk.

State of Arkansas, County of Jackson.

I, Atrides Crow, Clerk of the Circuit Court and ex-officio in and for the County of Jackson aforesaid, do hereby certify that the above and foregoing is a true transcript from the record, Book A, pages 91, 92, 93, 94, 95, and 96.

In witness whereof, I have hereunto set my hand, as said [SEAL.] Clerk and ex-officio Recorder, in and for the county

aforesaid, and affixed the seal of said Court, at office in Elizabeth, this 8th day of September, A. D. 1847.

ATRIDES CROW,
Clerk.

Filed 24th Sept. 1847.

WM. FIELD,
Clerk.
By J. T. TRIGG,
Deputy Clerk.

Exhibit C.

Pleas had before the Honorable Thomas Johnson, Judge of Jackson County Circuit Court, in the State of Arkansas, on the 30th day of July, A. D. 1844.

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, trading and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendants.
} Covenant.

On the 5th day of September, A. D. 1840, the plaintiffs filed their declaration, which is in the words and figures following, to wit:

State of Arkansas, Jackson County.

In the Circuit Court, in and for said county, to the Term thereof commencing on the third Monday after the fourth Monday of October, A. D. 1840.

William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of "William B. Duncan & Co.," plaintiffs in this suit, by attorney, complains of Noadiah Marsh, defendant to this suit, of a plea of breach of covenant.

For that whereas heretofore, to wit, on the twenty-second day of September, A. D. 1835, at Helena, to wit, in the County of Jackson aforesaid, and within the jurisdiction of this Court, by certain articles of agreement then and there made, concluded and agreed upon between the said plaintiffs, by their said partnership name of W. B. Duncan & Co., of the first part, and the said Noadiah Marsh of the second part, one part of which said articles of agreement, sealed with the seals of the said defendant, the said plaintiffs now being here into Court, the date whereof is the same day and year aforesaid, which said articles are in the words and figures, to wit: This agreement, made and entered into this 22d day of September, 1835, by and between William B. Duncan & Co., of Mississippi and Arkansas, of the first part, and Noadiah Marsh, of Batesville, in said Territory, of the second part, witnesseth, that the said party of the second part

hath this day bargained, sold, and assigned unto the said party of the first part, four donation claims, proven up at Helena, A. T., and as yet unconfirmed (viz.), the claims of Washington and Nancy Meeks, who are husband and wife; the claim of Ebenezer Crawford; the claim of Daniel Mays, and the claim of Enas Harrah, to two quarter sections of public lands to each claim, to which the above claimants are entitled under the provisions of an Act of Congress, entitled, "An Act to aid the State of Ohio in extending the Miami Canal from Dayton to Lake Erie, and to grant a quantity of land to said State to aid in the construction of the canals authorized by law, and for making donations of lands to certain persons in Arkansas Territory," approved the 24th of May, 1828. Now, as said claims are not yet passed upon by the register and receiver at the Land Office at Helena, the said party of the first part, doth agree to pay, in consideration therefor, the sum of four thousand dollars, or one thousand dollars each, as follows (viz.), two thousand dollars down at this time, the receipt whereof the said Marsh doth hereby acknowledge, and two thousand dollars whenever said claims are confirmed, that is one thousand dollars each for as many of said claims as may be confirmed, and should any or all of said claims not be confirmed, or after being once confirmed be reversed and invalidated, so that a patent or full and complete title cannot be obtained by said William B. Duncan & Co., then so soon as such reversal or invalidation shall be ascertained or determined by the proper authorities, the said Marsh agrees and binds himself to refund to said William B. Duncan & Co., all moneys that may have been received by him for any or all invalidated claims, which money shall be paid to the said William B. Duncan & Co., or their assigns. It is understood that said Marsh shall also procure, at his own expense, any farther additional proof, certificates of character of witnesses, &c., which may hereafter be required. It is also understood that the said William B. Duncan & Co., shall use their best exertions in bringing said claims and their proofs fairly before land officers at Helena, and obtaining a confirmation thereof. In testimony whereof, we have hereunto set our hands and seals, at Helena, this 22d day of September, 1835. (In duplicate.)

WILLIAM B. DUNCAN & CO. [SEAL.]
NOADIAH MARSH. [SEAL.]

Attest,
TUBNER JONES.

And for the performance and satisfaction of said agreement, each of the said parties did thereby covenant and agree with the other well and truly to observe and perform the agreements therein mentioned, and in default of any one article, well and truly to pay such penalty, forfeiture, sum or sums of money, to the other, as in and by said agreement is mentioned and expressed to be paid by the defendant, as by said article of agreement, reference being thereto had,

will (amongst other things) more fully and at large appear; and although the said plaintiffs has well and truly performed and fulfilled all and singular the covenants and agreements mentioned on their part and behalf to be done and performed, yet, protesting that the said defendant has not performed or fulfilled anything in said articles of agreement mentioned on his part and behalf to be done and performed, the said plaintiffs in fact say, that after making of the said articles of agreement, at (to wit) the county aforesaid, and before the first day of June, A. D. 1838, three of said donation claims were not confirmed, but rejected by the proper authority, to wit, the claim of Washington and Nancy Meeks, the claim of Daniel Mays, and the claim of Enos Harrah, and only one claim confirmed, to wit, the claim of Ebenezer Crawford, by the proper authority, to wit, the land office at Helena aforesaid.

And the said plaintiffs further say, that after making the said articles, (to wit,) on the 22d day of September, A. D. 1835, in the County aforesaid, the said defendant did not procure at his own expense such further and additional proof, certificates of character of witnesses, &c., as was necessary to confirm said claims by the proper authority, according to the form and effect of said articles of agreement; and the said plaintiffs further say, that after making of the said articles, on the day, and year aforesaid, at the County aforesaid, and after three of said claims were not confirmed, but rejected by the proper authority for deciding upon said claims, the said defendant did not refund to the said plaintiff all moneys received by him for any or all such invalidated claims, to wit, the sum of one thousand dollars, for each of said claims so invalidated or rejected as aforesaid, nor did he pay the sum of one thousand dollars for either of said invalidated or nonconfirmed claims which the said plaintiffs had paid to him, the said defendant, but made default in paying the same as agreed upon in said articles of agreement, whereby the said defendant forfeited and become liable to pay and refund to the said plaintiffs the sum of one thousand dollars, for such neglect and default, yet the said defendant has not paid or refunded to the said plaintiffs the said sum of one thousand dollars, or any part thereof, according to the tenor and effect of said articles of agreement, but has hitherto wholly neglected and refused, and still doth neglect and refuse, so to do, contrary to the said articles of agreement, and the said covenant of the said defendant by him in that behalf made as aforesaid, to wit, at, &c., aforesaid, and so the said plaintiffs saith that he, the said defendant, hath not kept with them the said covenants so made between them as aforesaid, but hath broken the same, and to keep the same with said plaintiffs, the said defendants hath hitherto wholly refused, and still doth refuse, to the damages of the said plaintiffs of two thousand dollars, and therefore they sue, &c.

W. F. DENTON,
Attorney for Plaintiffs.

The Clerk will please issue a writ of summons on this declaration, and hand the same to the Sheriff for service, &c.

W. F. DENTON.

Upon which declaration there is the following indorsement, to wit:

Filed this 5th day of September, A. D. 1840.

JOHN C. SAYLORS, Clerk.

By WM. Y. HAGGARD, Deputy Clerk.

The following writ of summons issued on the above declaration, to wit:

State of Arkansas, County of Jackson, *ss.*

To the Sheriff of the County of Jackson, greeting:

You are hereby commanded to summons Noadiah Marsh, if he be found within your bailiwick, to appear before the Judge of our Circuit Court, of Jackson County, at the court-house in the County aforesaid, on the first day of our next November Term, at a Court to be holden on the 16th day of November next, then and there to answer the complaint of William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, by the name, style, and firm, of Wm. B. Duncan & Co., to a plea of breach of covenant, damage two thousand dollars, and that you make due return of this writ to our said Court.

In testimony whereof, I have hereunto set my hand, as Clerk of said Circuit Court, and affixed the seal of office, [L. S.] this day of September, 1840, and of the Independence of the United States the 65th year.

JOHN C. SAYLORS, Clerk.

This is the following indorsement upon said writ of summons, to wit:

"I acknowledge the service of the within writ, September 5th, 184–."

N. MARSH.

The following proceedings were had in this case in Vacation, as appears of record, to wit:

State of Arkansas, County of Jackson.

Circuit Court, in Vacation, September, 1840.

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and doing business by the name, style, and firm, of WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant.
} Covenant. Damages, $2000.

And now, on this day, came the plaintiffs, by Denton and Noland,

their attorneys, and on their motion it is ruled, that they have leave to take the depositions of witnesses, *de bene esse*, before any judge or justice of the peace, or master in chancery, in the State of Arkansas, to be read as evidence on the trial of the above cause, and that a dedimus issue therefor.

JOHN C. SAYLORS,
Clerk.
By WM. Y. HAGGARD,
Deputy Clerk.

State of Arkansas, County of Jackson. In vacation. Circuit Court, October 13th, 1840.

FRANCIS SURGET, JOHN KER, STEPHEN DUNCAN, and WILLIAM B. DUNCAN, partners in trade, by the name and firm of WM. B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant.

And now, on this day, came the plaintiffs in this cause, by attorney, and moved to take depositions in this cause. It is ruled, that they have leave to take depositions in this cause, before any judge, justice of the peace, or any master in chancery, in this State, to be read in evidence in the above cause, and that a dedimus issue therefor.

JOHN C. SAYLORS,
Clerk.

On the 18th day of November, A. D. 1840, the defendant filed three pleas, which are as follows, to wit:

State of Arkansas, County of Jackson. November Circuit Court, A. D. 1840.

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH.
In Covenant.

And the defendant, by his attorney, comes and defends the wrongs and injuries, when, &c., and for plea says, that the plaintiffs aforesaid, their action aforesaid, ought not to have or maintain thereof against him, because he say that he has well and truly performed his covenant in this, that none of the donation claims mentioned in the plaintiffs' declaration *mentioned*, was rejected or invalidated, but confirmed; and of this he puts himself upon the country.

2. And the defendant, for a further plea in this behalf, by his attorney, says, the plaintiffs aforesaid, their action aforesaid, ought not to have or maintain thereof against him, because he says that in the State and County, &c., he did procure, at his own expense, all

further additional proof, certificates of character of witnesses, &c., which was thereafter required, according to the form and effect of said agreement or covenant; and this he puts himself upon the country.

HAGGARD,
For Defendant.

And the plaintiff doth the like.

W. F. DENTON,
Attorney.

3. And the defendant, for a further plea in this behalf, comes and says the plaintiffs aforesaid their action aforesaid ought not to have or maintain, because he says that the aforesaid plaintiffs have not well and truly kept and performed the covenant sued upon, as they were bound to do, in this, they did not use the best exertions in bringing said claims and their proofs fairly before said officers, at Helena, and obtaining a confirmation thereof; and of this he puts himself upon the country.

HAGGARD,
For Defendant.

And the plaintiff doth the like.

WM. F. DENTON,
Attorney for Plaintiffs.

Said pleas are indorsed, filed thus, "Filed in open Court, November 18th, 1840."

JOHN C. SAYLORS,
Clerk.

And on this said 18th day of November, 1840, the following proceedings were had, as appears of record, to wit:

W. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

Now, on this day, appeared the parties by their attorneys, and the pleas being filed, pleading to the plaintiffs' declaration, the plaintiffs demurred to two of the pleas, and joined issue to the last; whereupon said pleas were amended, and the plaintiffs joined issue to the several pleas. And, upon agreement, this cause is continued until the next term of this Court, and that the parties have leave to take depositions, to be read as evidence in this cause.

The following proceedings were had in this case, in vacation, as appears of record, to wit:

In Vacation. Jackson Circuit Court, April 28th, 1841.

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH.

And now, on this day, came the defendant, in his own proper

person, and moved for a rule to take the depositions of witnesses, to be read on the trial of the above cause, and it is considered by me that he have leave to take the depositions of witnesses in this State.

Before me, WM. Y. HAGGARD,
Clerk of Jackson C. C., Ark.

On the 17th day of May, A. D. 1841, the following proceedings were had, as appears of record, to wit:

W. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And now, on this day, appeared the parties by their attorneys, and the plaintiffs' attorney moved the Court to publish the depositions taken in this case, and by mutual consent of the parties the same were published, and all irregularities and illegality connected with their being opened by the Clerk, was waived by the parties by consent; whereupon the defendant made affidavit of the materiality of the testimony of A. W. Lyon and David Thompson, in his behalf; whereupon the case is continued until the next term of this Court.

On the 16th day of November, 1841, the following proceedings were had, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

On this day came the parties by their attorney, and the defendant filed a motion and affidavit for continuance in this cause, which was objected to by the plaintiff, and the Court, after hearing the arguments of counsel and being fully advised in the premises, ordered that this cause stand continued until the next term of this Court, and the costs abide the event of suit.

And on this 17th day of November, 1841, the following proceedings were had, to wit:

WM. B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and trading and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co.,
v.
NOADIAH MARSH. } In Covenant.

And now on this day appeared the parties, and the defendant moved the Court for leave to take depositions *de bene esse*, to be read as evidence on the trial of this cause, which motion was granted by the Court; and ordered by the Court that the defendant have leave to take the depositions of witnesses *de bene esse* before any Judge or Justice of the Peace in the United States, and that a dedimus issue therefor.

On the 18th day of May, 1842, the following proceedings were had, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

This day came the defendant, by his attorney, and on motion of the defendant he is permitted to amend his pleadings by filing another plea, which was done.

Which plea is in the words and figures following, to wit:

State of Arkansas, County of Jackson.

In the Circuit Court, to the May Term thereof, A. D. 1842.

NOADIAH MARSH,
ats.
WM. B. DUNCAN & Co. } In Covenant.

And for a further plea in this behalf, as to the said supposed breach of covenant above assigned, the said defendant, by leave of the Court here for that purpose first had and obtained, according to the form of the statute in such cases made and provided, says *actio non*, because he says that by said covenant, in said declaration mentioned, the said plaintiffs bound themselves to use their best exertions in bringing said claims (in said covenant named) and their proofs fairly before the land officers at Helena, and obtain confirmation thereof. And the said defendant avers that the said plaintiffs did not use their best exertions in bringing said claims and their proofs before the Land officers at Helena, and obtain a confirmation thereof, but that the said plaintiffs did wholly neglect to bring all of said claims and their proof fairly before the Land officers at Helena until the 3d day of May, A. D. 1838, to wit, at the County of Jackson aforesaid, and this the said defendant is ready to verify, wherefore he prays judgment, &c.

HAGGARD, BYERS, & PATTERSON,
For the Defendant.

Which plea is indorsed as follows, to wit:

"Filed May 18th, 1842.

"WM. Y. HAGGARD,
Clerk.

On this 19th day of May, 1842, the defendant filed another plea, which is in the words and figures following, to wit:

"Plea No. 5. And the said defendant for a further plea in their behalf comes and defends, &c., and says *actio non*, because he says that he, the said defendant, delivered to the said plaintiffs said claims in said covenant mentioned, to wit, on the 22d day of September, A. D. 1835, at the County of Jackson aforesaid, and only received of and from the said plaintiffs the sum of two thousand dollars, the

price stipulated in said covenant for two of the said donation claims therein mentioned, to wit, on, &c., at the County of Jackson aforesaid. And the said defendant avers that one of said donation claims in said covenant mentioned, to wit, the claim of Ebenezer Crawford, was confirmed by the Register and Receiver of the Land Office at Helena, Arkansas, and that said confirmation of said claim has never been reversed or annulled, to wit, at the County of Jackson aforesaid. And the said defendant avers that the said plaintiffs did not use their best exertion in bringing the claims in said covenant mentioned, to wit, the claim of Enos Harrah and the proofs relating to said claim, fairly before the said officers at Helena, until the 3d day of May, A. D. 1838. And the said defendant avers, that after the said 3d day of May, A. D. 1838, at which last date the law expired when said claims could be confirmed by the said Land officers at Helena, there was not sufficient time for this defendant to procure the further additional proofs and certificates of character of witnesses, &c., relative to the said claims of the said Enos Harrah, necessary to obtain a confirmation thereof. And the defendant further avers, that by reason of the negligence of the said plaintiffs aforesaid, in not bringing said claim of the said Enos Harrah, and the proof in relation thereto, fairly before the said officers of the Land office at Helena, the said claim of said Enos Harrah was rejected, and not confirmed, to wit, at the County of Jackson aforesaid, and this he, the said defendant, is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

HAGGARD, BYERS & PATTERSON,
Attorneys for Defendant.

Upon which plea there is the following indorsement, to wit:

Filed, May 19th, 1842.

WM. Y. HAGGARD,
Clerk.

On the said 19th day of May, 1842, the following proceedings appears of record, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And on this day came William F. Denton, attorney for the plaintiffs, and makes his motion in writing, filed, praying for a rule against the Clerk of this Court, William Y. Haggard, to produce and bring into Court Pleas No. 1, 2, and 3, by to-morrow morning, and the Court, being sufficiently advised in the premises, doth grant said rule, to be made returnable to-morrow morning.

The motion, referred to in the above order, cannot be found.

And on the same day, the *the* following order was made in the case, to wit:

W. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

Ordered by the Court, that this cause be continued until the next term of this Court.

On the 14th day of November, 1842, the following proceedings were had (to wit):

W. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And now, on this day, came the parties by their attorneys, and the defendant, by attorney, asked leave of the Court to withdraw the Plea No. Five, filed at the last term of this Court by the said defendant, which was granted by the Court; and thereupon the plaintiffs, by attorney, filed their demurrer to the plea No. Four, filed by the said defendant at the last term of this Court, to which demurrer the defendant joined issue, and the Court, after hearing the arguments of counsel, and not being sufficiently advised as to the law arising upon said demurrer, took the same under advisement.

The following is the plaintiffs' demurrer to the defendant's fourth plea, to wit:

State of Arkansas, County of Jackson, Circuit Court. November Term, 1842.

WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. }

And the said plaintiffs saith, that the said fourth plea of the said defendant, and the matters herein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining his aforesaid action thereof against the said defendant, and that the said plaintiffs are not bound by law to answer the same, and this the said plaintiffs are ready to verify, wherefore, for reason of the insufficiency of said plea in this behalf, the said plaintiffs pray judgment, and his damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, &c.; and the said plaintiffs, according to the form of the statutes in such cases made and provided, and shows to the Court here the following causes of demurrer to the said fourth

plea, that is to say, 1st, the plea is irrelevant; 2d, it is, does not answer the declaration; 3d, it is double; 4th, the plea sets forth nothing in bar of the plaintiff's action, and, also, the said fourth plea is illegal, informal, and insufficient, &c.

DENTON,
Attorney for Plaintiffs.

The demurrer is indorsed:

Filed, this 14th day of November, A. D. 1842.

GREEN SILVEY,
Clerk.

On the 15th day of November, 1842, the following proceedings were had (to wit):

WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } In Covenant.

And now, on this day, came the parties by their attorneys, and the Court, being sufficiently advised as to the law arising upon the demurrer to the fourth plea filed herein, and finds the same in favor of the plaintiffs; it is, therefore, considered by the Court, that said demurrer be sustained to the said plea, and that the said plaintiffs do have and recover of the said defendant their costs in and about this demurrer laid out and expended, &c.

On the 16th day of November, 1842, the following proceedings were had in this case, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade by the name, style, and firm of William B. Duncan & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } Covenant.

And now, on this day, came the parties, by their attorneys, and thereupon came a jury, to wit: James J. Waddill, John Gibson, John F. Saffold, Samuel Holley, Samuel Matthews, William G. Turner, Andrew J. Daugherty, Henry Stephens, Jonathan D. Harris, James Fortenberry, William Billings, and William Hogan, twelve good and lawful men, who, after being duly sworn to try the issue joined, and after hearing the evidence and argument of council, and after mature deliberation had, finds the following verdict, to wit: "We, the Jury, find for the plaintiffs, for the sum of one thousand two hundred and sixty-five dollars in damages; it is therefore considered by the Court, that the said plaintiffs, as partners as aforesaid, do have and recover of and from the said defendant the sum of one thousand two hundred and sixty-five dollars, in damages, assessed as aforesaid, together with

all their costs in this behalf laid out and expended, and the defendant, in mercy, &c.

On the 18th day of November, 1842, the defendant filed his motion for a new trial, which motion is in the words and figures following, to wit:

State of Arkansas, County of Jackson.

In the Circuit Court, at the Nov. Term, A. D. 1842.

NOADIAH MARSH
ads.
WILLIAM B. DUNCAN, FRANCIS SURGET, and JOHN KER, and STEPHEN DUNCAN, partners in trade, &c.

And now at this day comes the said defendant, by attorney, and moves the Court here for a new trial, to be awarded herein this case, and for reasons shows to the Court here the following, to wit: 1st. Because the Court erred in overruling the motion by the said defendant made to exclude the depositions of Harry L. Biscoe; 2d. Because the Court erred in overruling the motion by the said defendant made to exclude the answer to the 1st, and 2d, and 3d interrogatories, in the above deposition mentioned. 4th. Because the Court erred in excluding the transcript of the record of the Land Office at Helena, Arkansas; 5th. Because the jury found contrary to law and evidence; for these and further reasons, the said defendant prays that a new trial may be awarded him in the said case.

HAGGARD, POPE, & PATTERSON,
Attorneys for Defendant.

Which motion for a new trial is indorsed as follows, to wit:

"Filed, in open Court, 18th day of November, 1842.
"G. SILVY,
"Clerk."

And on the 18th of November, 1842, the following proceedings were had, as appears of record, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN,
v.
NOADIAH MARSH.
Covenant.

This day came the parties, by their attorneys, and the defendant moved the Court to set aside the verdict of the jury herein rendered, and grant a new trial in this cause, which, being argued by counsel on both sides, and by the Court fully understood, it is therefore considered and ordered by the Court, that the verdict of the jury be set

aside, and a new trial granted in this cause, to be had at the next Court, to which term this cause is continued; and it is further considered by the Court, that the costs abide the event of this suit.

On the 15th day of May, A. D. 1843, the following order was made in the case, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } Covenant.

And now on this day came the parties by their attorneys, and moved the Court for a continuance in this cause, whereupon it is ordered by the Court that this cause stand continued until the next term of this Court, by the consent of the parties.

On the 18th day of May, 1843, the following order was made, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners, doing business under the name, style, and description WILLIAM B. DUNCAN & Co.,
v.
NOADIAH MARSH. } Covenant.

Now on this day appeared the parties by their attorneys, and upon motion of the defendant, it is ruled that he have leave to take the deposition of witnesses, to be read as evidence on the trial of this cause, before any judge or justice of the peace within the United States, and that a dedimus issue therefor.

On the 13th day of Nov. 1843, the following order was made, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } Covenant.

And now on this day came the parties by their attorneys, and by consent of the parties this cause is continued until the next term of this Court, with leave to the defendant to file additional pleas.

And upon the 30th day of July, A. D. 1844, it being the day in the caption hereof named, the following proceedings were had, as appears of record, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and trading and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } Covenant.

And now on this day came the parties by their attorneys, and the

defendant, by leave of the Court, filed his plea of *bankruptcy*, to which the plaintiffs joined issue all in short upon the record, by consent of the parties; and neither party requiring a jury, this cause was submitted to the Court upon the issue joined, whereupon the Court, after hearing the evidence and allegations of the parties, and the premises being seen and fully understood:

It is therefore considered and adjudged by the Court here, that the said defendant go hence without, and do have and recover of and from the said plaintiffs, all his costs in this behalf expended, and the plaintiff in mercy, &c.

Jackson County, *sct.*

The State of Arkansas, to the Sheriff of Jackson County, State of Arkansas, greeting.

Whereas, Noadiah Marsh, on the 30th day of July, in the year of our Lord one thousand eight hundred and forty-four, at our Circuit Court, hath recovered against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners doing business under the name, style, and description of "William B. Duncan & Co.," all his costs expended in and about a certain suit instituted in said Court by said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of "William B. Duncan & Co.," plaintiffs against the said Noadiah Marsh, defendant of a plea of breach of covenant, which costs of the said Noadiah Marsh in and about said suit has been taxed to the sum of thirty-seven dollars and eighty-five cents, which were then and adjudged to him for his costs sustained in the said suit.

You are therefore commanded, that of the goods and chattels, lands and tenements, of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, you cause to be made the costs aforesaid, and that you have the same before our said Circuit Court on the nineteenth day of May next (1846), it being the second day of the next term of our Circuit Court, to satisfy the costs aforesaid, and that you then and there certify how you have executed this writ.

In testimony whereof, I, William Y. Haggard, Clerk of the Circuit Court within and for the County of Jackson aforesaid, as such Clerk have hereunto set my hand and affixed the Judicial seal of said Circuit Court at my office, the 13th day of April, A. D. 1846.

WM. Y. HAGGARD,
Clerk.

Bill of Defendant's costs as taxed, and to whom due.

1840.

John C. Saylors, Clerk.

To filing 3 pleas, each 10 cents, ...	30
Motion for leave to amend, ...	25

Entering order of leave to amend,	25	
Entering issue to three pleas, 25c. each,	75	
Order to take depositions,	25	
Entering of continuance,	25	
		2 05

1841.

W. Y. Haggard.

Affidavit for continuance,	25	
Order of continuance,	25	
Issuing subpœna for F. B. Tully,	50	
Motion and rule to take depositions,	50	
Issuing commission to take depositions,	1 00	
Issuing subpœna for A. W. Lyon,	50	
Commission to take depositions,	1 00	
Continuance,	25	

1842.

Filing motion and rule to amend,	25	
Entering order to amend,	25	
Filing amended plea,	10	
Entering continuance,	25	
		5 10

November, 1842.

To Green Silvey, Clerk.

To filing two bills of exceptions, 10 each,	10	
To filing motion for new trial,	05	
Entering order of new trial,	25	
Do. order of continuance,	15	

1843.

Motion, affidavit, and rule for continuance,	20	
Entering order of continuance,	15	
Motion, rule, and order to take depositions,	20	

1844.

To filing plea of bankruptcy and issue,	20	
Appearance of the parties,	10	
Trial before the Court without Jury,	25	
Entering judgment,	37½	
Transcribing judgment in judgment docket,	37½	
		2 10

Henry A. Engles, Sheriff of Independence County, for serving subpœna on A. W. Lyon, . . . 50

A. W. Lyon, of Batesville, witness for Defendant.

May Term, 1841, 60 miles circular, and 3 days,	6 00
Nov'r Term, 1841, 60 " " and 4 days,	7 00

May Term, 1842, 60 miles circular, and 4 days, .	7 00	
Nov'r Term, 1842, 60 " " and 4 days, .	7 00	
		27 00
Total costs taxed for the defendant, ...		$37 85

Test. WM. Y. HAGGARD, Clerk.

Jackson County, *set.*

I, John H. T. Webb, Sheriff of Jackson County, State of Arkansas, do hereby certify, that the execution came to my hands, as such sheriff, on the thirteenth day of April, A. D. 1846, to be by me, as such sheriff of Jackson County aforesaid, executed in due form of law, and in obedience to the commands of said writ of execution (there being no personal property found within my county of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, late partners doing business under the name, style, and description of "William B. Duncan & Co.," whereof to make the costs in said writ of execution mentioned), I, as such Sheriff of Jackson County, State of Arkansas, levied said writ of execution upon and seized by virtue of said execution, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, the following described lands and tenements, lying, being, and situated in the County of Jackson aforesaid, as the property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, late doing business by the name, style, and description of William B. Duncan & Co., to satisfy said execution, which lands and tenements so seized and levied upon as aforesaid are more particularly described as follows, to wit:

The southeast quarter of section No. nine, in Township No. eight north, of Range No. three west, containing one hundred and sixty acres; also the southwest quarter of the same section, Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. ten, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of the said section No. ten, in the same Township and Range; also the southeast quarter of section No. fifteen in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. fifteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section fifteen in the same Township and Range, containing one hundred and sixty acres; also the northeast quarter of section fifteen, in the same Township and Range, containing one hundred and sixty acres; also, the northwest quarter of section No. seventeen, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section seventeen in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section seventeen, in the same

Township and Range, containing one hundred and sixty acres; also the northeast quarter of section seventeen in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. twenty-two, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. twenty-two, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. twenty-two, in the same Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. twenty-two, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. eight, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section eight, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section twenty-nine, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section twenty-nine, in the same Township and Range, containing one hundred and sixty acres; also the northeast quarter of section twenty-nine, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section twenty-nine, in the same Township and Range, containing one hundred and sixty acres; also fractional section thirty, in the same Township and Range, containing six hundred and twenty-nine and 3-100 acres; also fractional section No. one, in the same Township and Range, containing six hundred and forty-one and 6-100 acres; also the northeast quarter of section No. two, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. two, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. eighteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section eighteen, in the same Township and Range, containing one hundred and sixty acres; also the west half of the northeast quarter of section eighteen, in the same Township and Range, containing eighty acres; also the west half of the southeast quarter of section eighteen, in the same Township and Range, containing also the northeast quarter of section No. nineteen, in the same Township and Range, containing one hundred and sixty acres; also the west quarter of section nineteen, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section nineteen, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section nineteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. eight, in the same Township and Range, containing one hundred and sixty acres; also the northeast quarter of section eight, in the same Township and Range, containing one hundred and sixty acres; also fractional section No.

five in the same Township and Range, containing five hundred and sixty-three and 82-100 acres; also the northwest quarter of section No. nine, in the same Township and Range, containing one hundred and sixty acres; also the west half of the northeast quarter of section nine, in the same Township and Range, containing eighty acres; also section No. thirty, in Township number seven north, of Range number three west; also the northeast quarter of section twenty-four, in the last above-named Township and Range, containing one hundred and sixty acres; also the northwest quarter of section twenty-four, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of section twenty-four, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section twenty-four, in the last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of section thirty-six, in the last above-named Township and Range, containing one hundred and sixty-acres; also the northwest quarter of section thirty-six, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section thirty-six, in the last-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of section thirty-six, in the last-named Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of section twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of section twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section twenty, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the north quarter of section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also section No. four, in Township number twelve north, of Range number two west; and section number seven and nine, in the last above-named Township and Range; and also section number ten and fifteen, in Township number twelve north, of Range number three west; and the southwest quarter of fractional section number four, in Township number eight north, of Range number three west: each and every one of which tracts were seized and levied upon by me, as such sheriff, by virtue of said execution to me directed, to satisfy the same. And in pursuance of the command of

said writ of execution and levy, I, as such sheriff, after having first advertised said lands and tenements according to law, by putting up in three of the most public places in each township in this, the County of Jackson, more than twenty days previous to the day of sale, written advertisements, and also one upon the court-house door of said County of Jackson, each of which written advertisements particularly described the above described lands and tenements levied upon as aforesaid, and the parties to the within execution, and stated that by virtue of said writ of execution to me directed, I, as such sheriff, would expose the said lands and tenements to public sale at the court-house door in the County of Jackson aforesaid, to the highest bidder, for cash in hand, on Monday, the eighteenth day of May, A. D. 1846, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, it being the first day of the May Term of the Circuit Court within and for said County of Jackson, for the year A. D. 1846, which advertisements were put up in three of the most public places in each Township in the County of Jackson aforesaid, and also one upon the court-house door, each of which was put up twenty days previous to the said day of sale, in pursuance of said levy and notices of sale, I, as such Sheriff, did, at the court-house door, in the County of Jackson aforesaid, on Monday, the eighteenth day of May, A. D. 1846, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of said day, expose to sale by public auction, to the highest bidder, for cash in hand, each of said tracts of land so levied upon as aforesaid, separately. And William Byers then and there bid for the S. W. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents; for N. W. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents; for W. ½ of the N. E. ¼ of Sec. 18, T. 8, of R. 3 W., the sum of twelve and a half cents; for W. ½ of the S. E. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents.

For S. E. ¼ Sec. 9, 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 10, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 10, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 22, T. 8 N., of R. 3. W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 22, T. 8 N., of R. 3. W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 29, T. 8 N., of R. 3. W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 29, T. 8 N., of R. 3. W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For fractional section 30, T. 8 N., of R. 3 W., 629 3-100 acres, 25 cents.

For fractional section 1, T. 8 N., of R. 3 W., 641 6-100 acres, 25 cents.

For the N. E. ¼ Sec. 2, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 2, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For fractional Sec. 5, T. 8 N., of R. 3 W., 563 82-100 acres, 25 cents.

For the N. W. ¼ Sec. 9, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the W. ½ of the N. E. ¼ Sec. 9, T. 8 N., of R. 3 W., 80 acres, 12½ cents.

For Section 30, T. 7 N., of R. 3 W., 640 acres, 25 cents.

For the N. E. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 36, T. 7 N. of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For Section 4, T. 12 N., of R. 2 W., 564 69-100 acres, 25 cents.
For Section 7, T. 12 N., of R. 2 W., 640 acres, 25 cents.
For Section 9, T. 12 N., of R. 2 W., 640 acres, 25 cents.
For Section 10, T. 12 N., of R. 3 W., 640 acres, 50 cents.
For Section 15, T. 12 N., of R. 3 W., 640 acres, 50 cents.
For the S. W. ¼ 4, T. 8 N., R. 3 W., 160 acres, 12½ cents.

And the said William Byers then and there bid separately for each of said tracts the sums aforesaid affixed to each tract, and he the said William Byers being the highest, best, and last bidder, for each of the above-named and described tracts of land, I, as such sheriff, struck off and sold each of said tracts to him the said Byers separately for his bids as aforesaid, the aggregate of which said bids amounts to the sum of eight dollars and eighty-seven and a half cents, which said sum of eight dollars eighty-seven and a half cents, the said William Byers then and there paid to me as such sheriff. And at the same time and place, Andrew J. Dougherty bid for the S. W. ¼ of Sec. 9, T. 8 N., of R. 3 W., the sum of 13 cents, and for the S. E. ¼ Sec. 15, T. 8 N., of R. 3 W. the sum of 13 cents, and he the said Andrew J. Dougherty being the highest, best, and last bidder

for each of said last-mentioned tracts of lands, I, as such sheriff, sold and struck the same off to him the said Daugherty at that price, and he the said Daugherty's bids, for said two tracts of land, amounted to the sum of twenty-six cents, which said sum of twenty-six cents the said Daugherty then and there paid to me as such sheriff.

The whole amount of money made on the within execution by the sale of said *of the said* lands levied upon as aforesaid, is nine dollars and thirteen and a half cents, which said sum I have now before your honorable Court, to be applied towards the payment and satisfaction of the costs in said execution mentioned, and the residue of said costs I cannot have before your honorable Court to satisfy said writ, because all the lands and tenements which were levied upon have been sold, and did not bring a sufficient amount to satisfy said costs. I therefore return this execution as unsatisfied as to the residue of the costs, after deducting the amount made by the sale of said lands.

JOHN H. T. WEBB,
Sheriff of Jackson County.

Sheriff fees.	
Levying, . .	$0 75
Advertising, . .	75
Returning this writ,	75
Commission, . .	9
	$2 34

Received of John H. T. Webb, Sheriff of Jackson County, five dollars and forty-eight cents, the amount made by sale of lands in the within writ to William Byers, except his fees as sheriff, which amount to the sum of $2 39, this 19th day of May, A. D. 1846.

BYERS & PATTERSON,
Attorneys for N. Marsh.

Received of Byers and Patterson the sum of five dollars and forty-eight cents on fees due me as a witness on the part of the defendant in the case of William B. Duncan & Co. v. Noadiah Marsh, breach of covenant, determined in the Jackson County Circuit Court, it being the amount received by them from John H. T. Webb, sheriff of Jackson County, and made by him as such sheriff on execution against said plaintiffs, October 20th, 1846.

A. W. LYON.

NOADIAH MARSH
v.
WM. B. DUNCAN & CO.

Execution returnable at May Term, A. D. 1846.
Bill of costs taxed to N. Marsh, for which he has judgment.

State of Arkansas, County of Jackson.

I, Atrides Crow, Clerk of the Circuit Court in and for the County

of Jackson aforesaid, do hereby certify that the annexed and foregoing is a true transcript of the records and papers, on the part of the defendant, in the case of William B. Duncan & Co., plaintiffs, and Noadiah Marsh, defendant.

In testimony whereof, I, Atrides Crow, Clerk of the Circuit Court of Jackson County aforesaid, have hereunto set my hand, and affixed the seal of said Circuit Court, at office, this 22d day of May, A. D. 1847.

[SEAL.]

ATRIDES CROW,
Clerk.

Filed 24th Sept. 1847.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

Exhibit D.

To all persons to whom these presents may come, I, John H. T. Webb, as Sheriff of Jackson County, State of Arkansas, send Greeting:

For that whereas Noadiah Marsh, by the judgment and consideration of the Circuit Court, within and for the County of Jackson, in the State of Arkansas, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-four, recovered judgment against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners doing business under the name, style, and description of William B. Duncan & Co., all his costs expended in and about a certain suit instituted in the said Circuit Court of Jackson County, by the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of William B. Duncan & Co., plaintiffs, against the said Noadiah Marsh, defendant, of a plea of breach of covenant; which costs of the said Noadiah Marsh, in and about said suit, which were by said Circuit Court adjudged to him as aforesaid, were taxed to the sum of thirty-seven dollars and eighty-five cents. And the said costs remaining wholly unpaid and unsatisfied, and the said judgment being in full force and effect, the said Noadiah Marsh afterwards, to wit, on the 13th day of April, A. D. 1846, for the obtaining satisfaction of said judgment, procured to be issued from the office of the Clerk of said Circuit Court of Jackson County aforesaid, a writ of execution, commonly called a writ of *fieri facias*, against the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of William B. Duncan & Co.; which said writ of execution, so issued aforesaid, ran in the name of *The State of Arkansas*, and was directed to the Sheriff of Jackson County, State of Arkansas;

and which said execution recited, that whereas Noadiah Marsh, on the 30th day of July, in the year of our Lord one thousand eight hundred and forty-four, at our Circuit Court, hath recovered against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, doing business under the name, style, and description of William B. Duncan & Co., all his costs expended in and about a certain suit instituted in said Court by said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of William B. Duncan & Co., plaintiffs, against the said Noadiah Marsh, defendant, of a plea of breach of covenant; which costs of the said Noadiah Marsh, in and about said suit, has been taxed to the sum of thirty-seven dollars and eighty-five cents, which were then and there adjudged to him for his costs sustained in the said suit; and the said writ of execution, after reciting as aforesaid, commanded the said Sheriff of Jackson County aforesaid, to whom said writ was directed, that of the goods and chattels, lands and tenements, of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, he should cause to be made the costs aforesaid, and that he have the same before the said Circuit Court of Jackson County, on the nineteenth day of May, A. D. 1846, and the second day of the May Term of said Circuit Court, for the year 1846, to satisfy the costs aforesaid, and that he then and there should certify how he had executed said writ. The said writ of execution, so issued as aforesaid, was dated and bore date the 13th day of April, A. D. 1846, and was under the judicial seal of said Circuit Court of Jackson County, and duly sealed and attested by the Clerk of said Circuit Court, and the fees due to each officer and other persons, costs of the said Noadiah Marsh, expended in and about said suit, was by the Clerk of said Circuit Court indorsed upon said writ of execution, according to the form of the statutes in such cases made and provided; and the said writ of execution was, in all things, in due form of law. And whereas, afterwards, to wit, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, the said writ of execution, issued as aforesaid, came to the hands of John H. T. Webb, as Sheriff of Jackson County, State of Arkansas (he, the said John H. T. Webb, then being and still continued to be, such Sheriff until long after the return day of said writ of execution), to be by him, as such Sheriff of Jackson County aforesaid, executed in due form of law; and whereas, afterwards, to wit, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, in obedience to the command of said writ of execution, and to make the costs aforesaid (there being no personal property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, doing business under the name, style, and description of William B. Duncan & Co., to be found within my County), I, John H. T. Webb, as Sheriff of Jackson County aforesaid, levied

said writ of execution upon, and seized by virtue of said writ of execution, the following described lands and tenements, lying, being, and situated in the County of Jackson aforesaid, as the property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, late doing business by the name, style, and description of William B. Duncan & Co., to satisfy said writ of execution; which said lands and tenements, so seized and levied upon by virtue of said writ of execution as aforesaid, are more particularly described as follows (to wit): The southeast quarter of section number nine, in township No. eight north, of range number three west, containing one hundred and sixty acres; also the southwest quarter of the same section, township, and range, containing one hundred and sixty acres; also the southeast quarter of section number ten, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the last-mentioned section, township, and range, containing one hundred and sixty acres; also the southeast quarter of section number fifteen, in same township and range, containing one hundred and sixty acres; also the southwest quarter of section number fifteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section fifteen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section fifteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number seventeen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the said section twenty-nine, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of said section twenty-nine, in

the same township and range, containing one hundred and sixty acres; also the northwest quarter of said section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also fractional section number thirty, in the same township and range, containing six hundred and twenty-nine and $\frac{3}{100}$ acres; also fractional section No. one, in the same Township and Range, containing 6 hundred and forty-one and 6-100 acres; also the northeast quarter of section No. two, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. two, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. eighteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. eighteen, in the same Township and Range, containing one hundred and sixty acres; also the west half of the northeast quarter of section No. eighteen, in the same Township and Range, containing eighty acres; also the west half of the southeast quarter of section No. eighteeen, containing eighty acres; also the northeast quarter of section No. nineteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. nineteen, in the same Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. nineteen, in the same Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. nineteen, in the same Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. eight, in the same Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. eight, in the same Township and Range, containing one hundred and sixty acres; also fractional section No. five, in the same Township and Range, containing five hundred and sixty-three and 82-100 acres; also the northwest quarter of section No. nine, in the same Township and Range, containing one hundred and sixty acres; also the west half of the northeast quarter of section No. nine, in the same Township and Range, containing eighty acres; also section number thirty, in Township number seven north, of Range number three west, containing six hundred and forty acres, more or less; also the northeast quarter of section number twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the southeast quarter of section twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the southwest quarter of section twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. thirty-six, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northwest

quarter of section thirty-six, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the southwest quarter of section thirty-six, in the last above mentioned Township and Range, containing one hundred and sixty acres; also the southeast quarter of section thirty-six, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northwest quarter of section No. twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of section No. twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section No. twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of section No. eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of said section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also section No. four, in Township No. twelve north, of Range No. two west, containing five hundred and sixty-four and $\frac{60}{100}$ acres, more or less; also section No. seven, in Township No. twelve north, of Range No. two west, containing six hundred and forty acres, more or less; also section No. ten, in said Township No. twelve north, of Range No. two west, containing six hundred and forty acres; also section No. ten, in Township No. twelve north, of Range No. three west, containing six hundred and forty acres; also section No. fifteen, in said Township No. twelve north, of Range No. three west, containing six hundred and forty acres; also the southwest quarter of fractional section No. four, in Township No. eight north, of Range No. three west, containing one hundred and sixty acres; all of which lands and tenements are situated in Jackson County aforesaid, and each and every one of said tracts of land were by me, John H. T. Webb, as such Sheriff of Jackson County, levied upon and seized by virtue of said execution to me directed, and were by me taken in execution as aforesaid, for the satisfaction of said execution, and for to make the costs aforesaid adjudged to the said Noadiah Marsh against the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, doing business by the name, style, and description of "William B. Duncan & Co." And whereas, in pursuance of the command of said writ of execution and levy and seizure of said lands and tenements as aforesaid, I, John H. T. Webb, as Sheriff of said County of Jackson, after first having given notice of the time and place of the sale of said lands and tenements, according to law, by putting up in three of the most public places in each Township in said County of Jackson, and also one upon the court-house door of

said County of Jackson, more than twenty days previous to the day of sale, written advertisements, each of which written advertisements particularly described the above-described land and tenements levied upon as aforesaid, and the parties to said writ of execution, and gave notice and stated that by virtue of said writ of execution and levy aforesaid, that I, John H. T. Webb, as Sheriff as aforesaid, would expose the said lands and tenements so levied upon as aforesaid to public sale, at the court-house door, in the Town of Elizabeth and County of Jackson aforesaid, to the highest bidder for cash in hand, on Monday, the 18th day of May, A. D. 1846, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, it being the first day of the then next term of the Circuit Court within and for said County of Jackson, after the said levy upon said lands, it being the first day of the commonly called May Term of said Circuit Court, in said County of Jackson, A. D. 1846, each of which advertisements were put up more than twenty days previous to the said eighteenth day of May, A. D. 1846; in pursuance to said levy and notices, I, John H. T. Webb, as Sheriff of the County of Jackson aforesaid, did on the said eighteenth day of May, A. D. 1846, it being the first day of the Circuit Court of the County of Jackson aforesaid, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, at the court-house door (for the said County of Jackson), in the Town of Elizabeth, in the said County of Jackson, expose to public sale by public auction and outcry, to the highest bidder for cash in hand, each of said tracts of land so levied upon and advertised as aforesaid, *separately*. And William Byers then and there bid for the following described tracts of land levied upon as aforesaid the sums following (to wit): For the southwest quarter of section eighteen, in Township eight north, of Range three west, the sum of twelve and a half cents; for the northwest quarter of section eighteen, in Township eight north, of Range three west, the sum of twelve and a half cents; for the west half of the northeast quarter of section eighteen, Township eight north, of Range three west, the sum of twelve and a half cents; for the west half of the southeast quarter of section eighteen, Township eight north, of Range three west, eighty acres, the sum of twelve and a half cents; for the southeast quarter of section nine, Township eight north, of Range, one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section ten, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section ten, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section fifteen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section fifteen, Township eight north, of Range three west, containing one

hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section fifteen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section seventeen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section seventeen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section seventeen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section seventeen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section No. twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section No. eight, in Township No. eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section eight, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty-nine, in township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-nine, in Township eight north, of Range three west, containone hundred and sixty acres, the sum of twelve and a half cents; for fractional section thirty, in Township eight north, of Range three west, containing six hundred and twenty-nine $\frac{8}{100}$ acres, the sum of twenty-five cents; for fractional section No. one, in Township eight north, of Range west, containing six hundred and forty-one and $\frac{8}{100}$ acres, the sum of twenty-five cents; for the northeast quarter of section No. two, in Township No. eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section two, in Township eight,

north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section No. nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, for the sum of twelve and a half cents; for the southwest quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section No. eight, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section eight, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for fractional section No. five, in Township eight north, of Range three west, containing five hundred and sixty three and $\frac{82}{100}$ acres, the sum of twelve and a half cents; for the northwest quarter of section nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the west half of the northeast quarter of section nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for section thirty, in Township No. seven north, of Range three west, containing six hundred and forty acres, more or less, the sum of twenty-five cents; for the north eight quarter of section twenty-four, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-four, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty-four, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-four, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section thirty-six, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section thirty-six, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section thirty-six, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section thirty-six, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section

twenty, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section eight, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section eight, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section eight, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section eight, in township seven north, of range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for section four, in township number twelve north, of range number two west, the sum of twenty-five cents; for section seven, in township twelve north, of range two west, containing six hundred and forty acres, the sum of twenty-five cents; for section nine, in township twelve north, of range two west, containing six hundred and forty acres, the sum of twenty-five cents; for section number ten, in township twelve north, of range three west, containing six hundred and forty acres, the sum of fifty cents; for section fifteen, in township twelve north, of range three west, containing six hundred and forty acres, the sum of fifty cents; for the southwest quarter of fractional section four, in township eight north, of range three, containing one hundred and sixty acres, the sum of twelve and a half cents. The said lands, above described, were by me, as such sheriff, set up, offered, and exposed to sale separately; each tract, as above described as being bid for by the said Byers, were by me, as such sheriff, set up, offered for sale, and struck off and sold separately to the said Byers, and for his bids above described, he being the highest, best, and last bidder for each of the above-described tracts for which he bid. Each tract of land bid for by the said Byers, as above described, was by me, as such sheriff, struck off and sold to him for the said sums affixed to each of said tracts, he being the highest, last, and best bidder for each of said

Each tract was by me, as such sheriff, struck off and sold to him separately (i. e.), each tract was by me offered, and struck off, and sold separately, one struck off and sold before the other was offered, in succession, until the whole was sold; which several sums, bid by the said Byers for said tracts of land, in the aggregate amounted to the sum of eight dollars and eighty-seven and a half cents; the said William Byers then and there paid me (John H. T. Webb), as such

sheriff, it being the amount of his bids aforesaid, and the consideration for which I, as such sheriff, publicly, by public vendue and outcry, struck off and sold to him said lands and tenements; which said sum of eight dollars and eighty-seven and a half cents, I, as such sheriff, have applied to the payment of said costs in said writ of execution mentioned, as far as said sum would pay the same.

Therefore, be it known, that I, John H. T. Webb, in my capacity of Sheriff of Jackson County, State of Arkansas, and by virtue of the authority vested in me by law, in consideration of the sum of eight dollars and eighty-seven and a half cents, to me, as such sheriff, in hand paid by Williams Byers, the receipt whereof is hereby acknowledged, and the said Byers forever acquitted; and in consideration of the premises hereinbefore recited, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said William Byers and his heirs and assigns forever, all, each, and every part and parcel of land bid off by him, and by me sold to him as hereinabove mentioned (to wit), the southwest quarter of section eighteen, containing one hundred and sixty acres; the northwest quarter of section eighteen; the west half of the northeast quarter of section eighteen, and the west half of the southeast quarter of section eighteen; the southeast quarter of section nine, the southeast quarter of section ten, the southwest quarter of section ten, the southwest quarter of section fifteen, and the northwest quarter of section fifteen, and the northeast quarter of section fifteen, and the southwest quarter of section seventeen, and the southeast quarter of section seventeen, and northwest quarter of section seventeen, and the southeast quarter of section twenty-two, and the southwest quarter of section twenty-two, and the northwest quarter of section twenty-two, and the northeast quarter of section twenty-two, and the southeast quarter of section eight, and the southwest quarter of section eight, and the southeast quarter of section twenty-nine, and the southwest quarter of section twenty-nine, and the northeast quarter of section twenty-nine, and the northwest quarter of section twenty-nine, and fractional section thirty, and fractional section one, and the northeast quarter of section two, and the southeast quarter of section two, and the northeast quarter of section nineteen, and the northwest quarter of section nineteen, and the southwest quarter of section nineteen, and the southeast quarter of section nineteen, and the northwest quarter of section eight, and the northeast quarter of section eight, and fractional section five, and the northwest quarter of section nine, and the west half of the northeast quarter of section nine: all of which above-named tracts are in Township number eight north, of Range three west; also section thirty, in Township number seven north, of Range three west; also the northeast quarter of section twenty-four, and the northwest, southeast, southwest quarters of said section twenty-four, in Township seven north, of Range three west; and the northeast quarter, northwest quarter, southwest quarter,

and southeast quarter of section thirty-six, in Township seven north, of Range three west; also the northwest quarter and the northeast and southeast quarter and southwest quarter of section twenty, in Township seven north, of Range three west; also the and northwest and the southeast and southwest quarters of section eight, in Township seven north, of Range three west; also section No. four, in Township twelve north, of Range two west, and section No. seven, in Township twelve north, of Range two west, and section No. nine, in Township twelve north, of Range two west, and section ten, in Township twelve north, of Range three west, and section No. fifteen, in Township twelve north, of Range three west, and the southwest quarter of fractional section four, in Township eight north, of Range three west. All of which tracts of land are lying and being situated in the County of Jackson, and are the same tracts of land hereinbefore described as being bid off by the said Byers, and by me as such Sheriff aforesaid sold to him, by virtue of said writ of execution to me directed, and by me levied upon said lands and tenements as hereinbefore stated. And I, John H. T. Webb, as such Sheriff, by virtue of the premises, do give, grant, bargain, and sell, and convey unto the said William Byers, his heirs and assigns, forever, all the right, title, interest, and estate of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, late partners, doing business under the name, style, and description of William B. Duncan & Co., or either of them, had into or over the said described granted, bargained, and sold lands and tenements, and every part and parcel thereof, as fully, completely, and amply as I, as such Sheriff, ought, could, or should do by virtue of the premises hereinbefore stated, and by the law of the land.

To have and to hold the above given, granted, bargained, and sold lands and tenements, and each and every tract, part, and parcel thereof, together with all the improvements and appurtenances to the same in any wise belonging, unto the said William Byers, his heirs and assigns, forever. And I, as such Sheriff, do covenant to and with the said Byers, that in the levying upon said lands and the advertising and selling of the same, that I have complied with all the rules and regulations prescribed by law for the selling of Real Estate under execution.

In testimony whereof, I, John H. T. Webb, as Sheriff of Jackson County aforesaid, have hereunto set my hand and seal, this 1st day of September, A. D. 1846.

[SEAL.] JOHN H. T. WEBB,
Sheriff, Jackson County, State of Arkansas.

Signed, sealed, and delivered
in the presence of
JOHN TONEY,
A. CROW.

In the Jackson County Circuit Court, at the November Term thereof,

A. D. 1846. Be it remembered, that on the 17th day of November, personally appeared in open Court, John H. T. Webb, late Sheriff of the County of Jackson, and who is personally well known to the Court as such, and presented to the Court here a deed executed to William Byers, by him, the said John H. T. Webb, as such Sheriff, whereby he, as such Sheriff, by virtue of an execution to him directed, in favor of Noadiah Marsh, against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, doing business under the name, style, and description of William B. Duncan & Co., he, the said John H. T. Webb, as such Sheriff, had levied and sold to William Byers the following described lands and tenements, to wit: the southwest quarter of section 18, Township 8 north, of Range 3 west; the west half of the northeast quarter of sect. 18, Township 8 north, of Range 3 west; the west half of the southeast quarter of section 18, Township 8 north, of Range 3 west; the southeast quarter of section nine, Township 8 north, of Range 3 west; the southeast quarter of section ten, Township 8 north, of Range 3 west; the southwest quarter of section ten, Township 8 north, of Range 3 west; the S. W. ¼ Sec. 15, T. 8 N., R. 3 W.; the N. W. ¼ Sec. 15, T. 8 N., R. 3 W.; the N. E. ¼ Sec. 15, T. 8 N., R. 3 W.; the S. W. ¼ Sec. 17, T. 8 N., R. 3 W.; the S. E. ¼ Sec. 17, T. 8 N., R. 3 W.; the N. E. ¼ Sec. 17, T. 8 N., R. 3 W.; the N. W. ¼ Sec. 17, T. 8 N., R. 3 W.; the Sec. 22, T. 8 N., R. 3 W.; the S. ½ Sec. 8, T. 8 N., R. 3 W.; the Sec. 29, T. 8 N., R. 3 W.; the fractional Sec. 30, T. 8 N., R. 3 W.; the fractional Sec. 1, T. 8 N., R. 3 W.; the N. E. ¼ Sec. 2, T. 8 N., R. 3 W.; the S. E. ¼ Sec. 2, T. 8 N., R. 3 W.; the Sec. 19, T. 8 N., R. 3 W.; the N. ½ of Sec. 8, T. 8 N., R. 3 W.; the fractional Sec. 5, T. 8 N., R. 3 W.; the N. W. ¼ Sec. 9, T. 8 N., R. 3 W.; the N. W. ¼ Sec. 9, T. 8 N., R. 3 W.; the W. ½ of N. E. ¼ Sec. 9, T. 8 N., R. 3 W.; Sec. 30, T. 7 N., R. 3 W.; the Sec. 24, T. 7 N., R. 3 W.; the Sec. 36, T. 7 N., R. 3 W.; the Sec. 20, T. 7 N., R. 3 W.; the Sec. 8, T. 7 N., R. 3 W.; the fractional Sec. 4, T. 12 N., R. 2 W.; the Sec. 7, T. 12 N., R. 2 W.; the Sec. 9, T. 12 N., R. 2 W.; the Sec. 10, T. 12 N., R. 3 W.; the Sec. 15, T. 12 N., R. 3 W.; and the S. W. quarter of fractional Sec. 4, T. 8 N., R. 3 W, all lying and being in the County of Jackson, and State of Arkansas, and the said John H. T. Webb, as such sheriff, acknowledged and stated in open Court here that he had executed and delivered the said deed of conveyance to the said William Byers, for the consideration, uses, and purposes herein expressed and set forth, and desired that the same may be certified. Whereupon, on motion of the said William Byers, it is by the Court ordered, that the said acknowledgment be spread upon the records of this Court, and indorsed upon said deed, certified under the seal of this Court, and that said deed of conveyance be admitted to record.

Jackson County, *set.*

I, Atrides Crow, Clerk of the Circuit in and for the County of

Jackson aforesaid, do hereby certify that the foregoing indorsement is a true copy of the records of this acknowledgment.

In testimony whereof, I have hereunto set my hand as said Clerk, and affixed the seal of the Court, at office, this 19th of November, A. D. 1846.

[SEAL.]

ATRIDES CROW,
Clerk.

State of Arkansas, County of Jackson, *ss.*

I, Atrides Crow, Clerk of the Circuit Court and ex-officio Recorder for the County of Jackson aforesaid, do hereby certify that the annexed and foregoing deed of conveyance was filed in my office for record, on the 19th day of November, A. D. 1846, and that the same is now duly recorded in Record Book "D," pages 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43. In testimony whereof, I, Atrides Crow, Clerk of the Circuit Court and ex-officio Recorder for the County of Jackson aforesaid, have hereunto set my hand and affixed the seal of said Court, at office, this 16th day of December, A. D. 1846.

[SEAL.]

ATRIDES CROW,
Clerk.

State of Arkansas, County of Jackson, *ss.*

I, Atrides Crow, Clerk of the Circuit Court and ex-officio Recorder for the County of Jackson aforesaid, do hereby certify that the annexed and foregoing is a true copy from the Record Book "D," pages 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43.

In testimony whereof, I have hereunto set my hand as such Clerk and ex-officio Recorder, and affixed the seal of said Court at office, in the town of Elizabeth, this 4th day of February, A. D. 1847.

ATRIDES CROW,
Clerk.

Copy, . .	$5 00
Certificate and seal,	37½
County tax, .	50
	$5 87½

Filed 24th Sept. 1847.

WM. FIELD,
Clerk.
By JNO. T. TRIGG,
Deputy Clerk.

Exhibit E.

"Exhibit E," a part of the Answer of William Byers.

Pleas had before the Honorable Thomas Johnson, Judge of the Jackson County Circuit Court in the State of Arkansas, on the 30th day of July, A. D. 1844.

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and trading and doing business by the name, style, and firm of "WILLIAM B. DUNCAN & Co.," Plaintiffs,
v.
NOADIAH MARSH, Defendant.
} Covenant.

On the fifth day of September, A. D. 1840, the plaintiffs filed their declaration, which is in the words and figures following, to wit:

State of Arkansas, Jackson County.

In the Circuit Court in and for said County to the term thereof commencing on the third Monday after the fourth Monday of October, A. D. 1840.

William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of "William B. Duncan & Co.," plaintiffs in this suit, by attorney, complain of Noadiah Marsh, defendant to this suit, of a plea of breach of covenant.

For that whereas, heretofore, to wit, on the twenty-second day of September, A. D. 1835, at Helena, to wit, in the County of Jackson, aforesaid, and within the jurisdiction of this Court, by certain articles of agreement, then and there made, concluded, and agreed upon between the said plaintiffs by their said partnership name of William B. Duncan & Co., of the first part, and the said Noadiah Marsh, of the second part, of which said articles of agreement, sealed with the seal of said defendant, the said plaintiffs now brings here into Court, the date whereof is the same day and year aforesaid, which said articles are in the words and figures, to wit: "This agreement, made and entered into this 22d day of September, 1835, by and between William B. Duncan & Co., of Mississippi and Arkansas, of the first part, and Noadiah Marsh, of Batesville, in said Territory, of the second part, witnesseth, that the said party of the second part hath this day bargained, sold, and assigned, unto the said party of the first part, four donation claims, proven up at St. Helena, A. T., and, as yet, unconfirmed (viz.), the claim of Washington and Nancy Meeks, who are husband and wife; the claim of Ebenezer Crawford, the claim of Daniel Mayes, and the claim of Enos Harrah, to two quarter sections of public lands to each claim, to which the above claimants are entitled under the provisions of an Act of Congress, entitled "An Act, to aid the State of Ohio in extending the Miami Canal from Dayton to Lake Erie, and to grant a quantity of land to said State, to aid in the construction of the Canals authorized by law; and for making donations of lands to certain persons in Arkansas Territory," approved the 24th of May, 1828; now, as said claims are not yet passed upon by the Register and Receiver of the Land-Office, at Helena,

the said party of the first part, doth agree to pay, in consideration therefor, the sum of four thousand dollars, or one thousand dollars each, as follows (viz.): two thousand dollars down at this time, the receipt whereof the said Marsh doth hereby acknowledge, and two thousand dollars whenever said claims are confirmed, that is, one thousand dollars each for as many of said claims as may be confirmed, and should any, or all of said claims, not be confirmed, or, after being once confirmed, be reversed and invalidated, so that a patent or full and complete title cannot be obtained by said William B. Duncan & Co., then, so soon as such reversal, or invalidation, shall be ascertained and determined by the proper authority, the said Marsh agrees and binds himself to refund to said William B. Duncan & Co. all moneys that may have been received by him for any or all such invalidated claims, which money shall be paid to the said William B. Duncan & Co., or their assigns. It is understood, that said Marsh shall also procure, at his own expense, any further additional proof, certificates of character of witnesses, which may hereafter be required; it is also understood, that the said William B. Duncan & Co. shall use their best exertions in bringing said claims and their proofs fairly before land-officers, at Helena, and obtaining a confirmation thereof. In testimony whereof, we have hereunto set our hands and seals, at Helena, this 22d day of September, 1835 (in duplicate).

WILLIAM B. DUNCAN & CO. [SEAL.]
NOADIAH MARSH. [SEAL.]

Attest: TUBNER JONES.

And, for the performance and satisfaction of said agreement, each of the said parties did thereby covenant and agree, with the other, well and truly to observe and perform all the agreements therein mentioned, and, in default of any one article, well and truly to pay such penalty, forfeiture, sum, and sums of money to the other, as in and by said agreement is mentioned and expressed to be paid by the defendant, as by said articles of agreement, reference being thereto had, will (amongst other things) more fully and at large appear; and although the said plaintiffs has well and truly performed and fulfilled all and singular the covenants and agreements in the said articles of agreement mentioned on their part and behalf to be done and performed, yet protesting, that the said defendant has not performed or fulfilled anything in said articles of agreement mentioned on his part and behalf to be done and performed, the said plaintiffs in fact say, that, after making of the said articles of agreement at (to wit) the county aforesaid, and before the first day of June, A. D. 1838, three of said donation-claims were not confirmed, but rejected by the proper authority, to wit, the claim of Washington and Nancy Meeks, the claim of Daniel Mayes, and the claim of Enos Harrah, and only one claim confirmed, to wit, the claim of Ebenezer Craw-

ford, by the proper authority, to wit, the Land officers, at Helena, aforesaid.

And the said plaintiffs further say, that, after making the said articles, to wit, on the 22d day of September, A. D. 1835, in the County aforesaid, the said defendant did not procure, at his own expense, such further and additional proof, certificates of character of witnesses, &c., as was necessary to confirm said claims, by the property authority according to the form and effect of said articles of agreement; and the said plaintiffs further say, that, after making of the said articles, on the day and year aforesaid, at the county aforesaid, and after three of said claims were not confirmed, but rejected by the proper authority for deciding upon said claims, the said defendant did not refund to the said plaintiffs all moneys received by him, for any or all such invalidated claims, to-wit, the sum of one thousand dollars for each of said claims so invalidated or rejected as aforesaid, nor did he pay the sum of one thousand dollars for either of said invalidated or non-confirmed claims, which the said plaintiffs had paid to him, the said defendant, but made default in paying the same, as agreed upon in said articles of agreement, whereby the said defendant forfeited and became liable to pay and refund to the said plaintiffs the sum of one thousand dollars for such neglect and default, yet the said defendant has not as yet paid or refunded to the said plaintiffs the said sum of one thousand dollars, or any part thereof, according to the tenor and effect of said articles of agreement, but has hitherto wholly neglected and refused, and still doth neglect and refuse so to do, contrary to the said articles of agreement, and the said covenant of the said defendant by him in that behalf made as aforesaid, to wit, at, &c., aforesaid; and so the said plaintiff saith, that he, the said defendant, hath not kept with them the said covenants so made between them, as aforesaid, but hath broken the same, and to keep the same with the said plaintiffs, the said defendant hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiffs of two thousand dollars, and therefore they sue, &c.

WM. F. DENTON,
Attorney for Plaintiffs.

The clerk will please issue a writ of summons on this declaration, and hand the same to the sheriff for service, &c.

WM. F. DENTON.

Upon which declaration there is the following indorsement, to wit:

"Filed this fifth day of September, A. D. 1840."

"JNO. C. SAYLORS,
Clerk.

"By WM. Y. HAGGARD,
Deputy Clerk."

The following writ of summons issued on the above declaration, to wit:

State of Arkansas, County of Arkansas, *ss.*

The State of Arkansas, to the Sheriff of the County of Jackson, greeting:

You are hereby commanded to summon Noadiah Marsh, if he be found within your bailiwick, to appear before the Judge of our Circuit Court of Jackson County at the court-house, in the County aforesaid, on the first day of our next November Term, at a Court to be holden on the 16th day of November next, then and there to answer the complaint of William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, by the name, style, and firm of Wm. B. Duncan & Co., to a plea of breach of covenant, damage two thousand dollars, and that you make due return of this writ to our said Court.

In testimony whereof I have hereunto set my hand as Clerk of said Circuit Court, and affixed the seal of office this day of September, 1840, and of the Independence of the United States the 65th year.

[L. S.]

JOHN C. SAYLORS,
Clerk.

There is the following indorsement upon said writ of summons, to wit:

"I acknowledge the service of the within writ. Sept. 5th, 1840."
"N. MARSH."

The following proceedings were had in this case in vacation, as appears of record, to wit:

State of Arkansas, County of Jackson.

Circuit Court, in vacation, Sept. 1840.

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co., Plaintiffs,

v.

NOADIAH MARSH, Defendant.

Damages $2000.00.

And now on this day came the plaintiff, by Denton and Noland, their attorneys, and on their motion, it is ruled that they have leave to take the depositions of witnesses, *de bene esse*, before any Judge or Justice of the Peace, or Master in Chancery, in the State of Arkansas, to be read in evidence on the trial of the above cause, and that a dedimus issue therefor.

JOHN C. SAYLORS,
Clerk.
By WM. Y. HAGGARD,
Deputy Clerk.

State of Arkansas, County of Jackson.

In vacation, Circuit Court, October 13th, 1840.

FRANCIS SURGET, JOHN KER, STEPHEN DUNCAN, and WM. B. DUNCAN, partners in trade, by the name and firm of WM. B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant.

And now on this day came the plaintiffs in this cause by attorney and moved to take depositions in this cause. It is ruled that they have leave to take depositions in this cause, before any Judge, Justice of the Peace, or Master in Chancery in this State, to be read in evidence, in the above cause, and that a dedimus issue therefor.

JOHN C. SAYLORS,
Clerk.

On the 18th day of November, A. D. 1840, the defendant filed three pleas, which are as follows, to wit:

State of Arkansas, County of Jackson.

November Circuit Court, A. D. 1840.

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And the defendant by his attorney comes and defends the wrong and injury when, &c., and for the plea says, that the plaintiffs aforesaid their action aforesaid ought not to have or maintain thereof against him, because he says that he has well and truly performed his covenant in this, that none of the donation claims mentioned in the plaintiffs' declaration mentioned, was rejected or invalidated, but confirmed, and of this he puts himself upon the country.

2d. And the defendant, for a further plea in this behalf, by his attorney, says, the plaintiffs aforesaid their action aforesaid ought not to have or maintain against him, because he says, that in the State and County, &c., he did procure at his own expense all further additional proof, certificates of character of witnesses, &c., which was thereafter required, according to the form and effect of said agreement or covenant. And this he puts himself upon the country.

HAGGARD,
For Defendant.

And the plaintiff doth the like.

WM. F. DENTON,
Attorney.

3. And the defendant, for a further plea in this behalf, comes and

says, the plaintiffs aforesaid their action aforesaid ought not to have or maintain, because he says that the aforesaid plaintiffs have not well and truly kept and performed the covenant sued upon, as they were bound to do in this, they did not use their best exertions in bringing said claims and their proofs fairly before said officers at Helena, and obtaining a confirmation thereof, and of this he puts himself upon the country.

HAGGARD,
For Defendant.

And the plaintiffs doth the like.

WM. F. DENTON,
Attorney for Plaintiffs.

Said pleas are indorsed filed thus:

"Filed in open Court, November 18, 1840.
"JNO. C. SAYLORS,
"Clerk."

And on the said 18th day of November, 1840, the following proceedings were had, as appear of record, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

Now on this day appeared the parties by their attorneys, and the pleas being filed, pleading to the plaintiffs' declaration, the plaintiffs demurred to two of the pleas, and joined issue to the last. Whereupon said pleas were amended, and the plaintiffs joined issue to the several pleas. And upon agreement this cause is continued until the next term of this Court, and that the parties have leave to take depositions to be read as evidence in this cause.

The following proceedings were had in this case in vacation, as appears of record, to wit:

In Vacation, Jackson Circuit Court, April 28th, 1841.

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH.

And now on this day came the defendant in his own proper person, and moved for a rule to take the deposition of witnesses to be read on the trial of the above cause, and it is considered by me that he have leave to take the depositions of witnesses in this State.

Before me, WM. Y. HAGGARD,
Clerk of Jackson C. C. Ark.

On the 17th day of May, A. D. 1841, the following proceedings were had, as appears of record, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And now on this day appeared the parties by their attorneys, and the plaintiffs' attorney moved the Court to publish the depositions taken in this case, and by mutual consent of the parties the same were published, and all irregularity and illegality connected with their being opened by the Clerk was waived by the parties by consent. Whereupon the defendant made affidavit of the materiality of the testimony of A. W. Lyon and Davis Thompson, in his behalf, whereupon the case is continued until the next term of this Court.

On the 16th day of November, 1841, the following proceedings were had, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

On this day came the parties by their attorney, and the defendant filed a motion and affidavit for continuance in this cause, which was objected to by the plaintiffs, and the Court, after hearing the argument of counsel, and being fully advised in the premises, ordered that this cause stand continued until the next term of this Court, and the costs abide the event of suit.

And on the 17th day of November, 1841, the following proceedings were had, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and trading and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co.,
v.
NOADIAH MARSH. } In Covenant.

And now on this day appeared the parties, and the defendant moved the Court for leave to take depositions, *de bene esse*, to be read as evidence on the trial of this cause, which motion was granted by the Court, and ordered by the Court that the defendant have leave to take the depositions of witnesses, *de bene esse*, before any judge or justice of the peace in the United States, and that a dedimus issue therefor.

On the 18th day of May, 1842, the following proceedings were had, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

This day come the defendant by his attorneys, and on motion of the defendant he is permitted to amend his pleadings by filing another plea which was done.

Which plea is in the words and figures following, to wit:

State of Arkansas, County of Jackson.

In the Circuit Court to the May Term thereof, A. D. 1842.

NOADIAH MARSH,
ats.
WM. B. DUNCAN & Co. } In Covenant.

And for a further plea in this behalf, as to the said supposed breach of covenant above assigned, the said defendant, by leave of the Court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, says *actio non*, because he says that by said covenant, in said declaration mentioned, the said plaintiffs bound themselves to use their best exertions in bringing said claims (in said covenant named), and their proofs fairly before the Land Officers at Helena, and obtain a confirmation thereof. And the said defendant avers that the said plaintiffs did not use their best exertions in bringing said claims and their proofs fairly before the Land Officers at Helena, until the 3d day of May, A. D. 1838, to wit, at the County of Jackson aforesaid; and this the said defendant is ready to verify—wherefore he prays judgment.

HAGGARD, BYERS, & PATTERSON,
For the Defendant.

Which plea is indorsed as follows, to wit:

Filed May 18th, 1842.

WM. Y. HAGGARD,
Clerk.

On the 19th day of May, 1842, the defendant filed another plea, which is in the words and figures following, to wit:

Plea No. 5. And the said defendant for a further plea in this behalf, comes and defends, &c., and says, *actio non*, because he says that he, the said defendant, delivered to the said plaintiffs said claims in said covenant mentioned, to wit, on the 22d day of September, A. D. 1835, at the County of Jackson aforesaid, and received of and from the said plaintiffs, the sum of two thousand dollars, the price stipulated in said covenant for two of the said donation claims therein mentioned, to wit, on, &c., at the County of Jackson aforesaid. And the said defendant avers that one of said donation claims in said

covenant mentioned, to wit, the claim of Ebenezer Crawford, was confirmed by the Register and Receiver of the Land Office, at Helena, Arkansas, and that confirmation of said claim has never been reversed or annulled, to wit, at the County of Jackson aforesaid. And the said defendant avers that the said plaintiffs did not use their best exertions in bringing the claim in said covenant mentioned to wit, the claim of Enos Harrah and the proofs relative to said claims fairly before the said officers at Helena, but the said plaintiffs wholly neglected to present the same to said officers, until the 3d day of May, A. D. 1838. And the said defendant avers that after the said 3d day of May, A. D. 1838, until the 24th day of May, A. D. 1838, at which last date the law expired when said claims could be confirmed by the said Land Officers at Helena, there was not sufficient time for this defendant to procure the further additional proofs and certificates of character of witnesses, &c., relative to the said claim of the said Enos Harrah necessary to obtain a confirmation thereof. And the defendant further avers, that by reason of the negligence of the said plaintiffs aforesaid in not bringing said claim of the said Enos Harrah and the proofs in relation thereto fairly before the said Land Officers at Helena, the said claim of said Enos Harrah was rejected, and not confirmed, to wit, at the County of Jackson aforesaid; and this, he, the said defendant, is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

HAGGARD, BYERS, & PATTERSON,
Attorneys for the Defendant.

Upon which plea there is the following indorsement, to wit:

Filed May 19th, 1842.

WM. HAGGARD,
Clerk.

On the said 19th day of May, 1842, the following proceedings appear of record, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

And on this day come William F. Denton, attorney for the plaintiffs, and makes his motion in writing filed, praying for a rule against the Clerk of this Court, William Y. Haggard, to produce and bring into Court Pleas No. 1, 2, and 3, by to-morrow morning; and the Court being sufficiently advised in the premises, doth grant said rule, to be made returnable to-morrow morning.

The motion referred to in the above order cannot be found.

And on the same day the following order was made in the case, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } In Covenant.

Ordered by the Court that this cause be continued until the next term of this Court.

On the 14th day of November, 1842, the following proceedings were had (to wit):

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH. } Covenant.

And now this day came the parties by their attorneys, and the defendant, by attorney, asked leave of the Court to withdraw the plea No. Five, filed at the last term of this Court by the said defendant, which was granted by the Court. And thereupon the plaintiffs, by attorney, filed their demurrer to the plea No. Four, filed by the said defendant at the last term of this Court, to which demurrer the defendant joined issue, and the Court, after hearing the argument of counsel, and not being sufficiently advised as to the law arising upon said demurrer, took the same under advisement.

On the 15th day of November, 1842, the following proceedings were had, to wit:

WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } Covenant.

And now on this day come the parties by their attorneys, and the Court being sufficiently advised as to the law arising upon the demurrer to the fourth plea filed herein, and finds the same in favor of the plaintiffs. It is therefore considered by the Court that said demurrer be sustained to the said plea, and that the said plaintiffs do have and recover of the said defendant their costs in and about this demurrer laid out and expended, &c.

On the 16th day of November, 1842, the following proceedings were had in this case, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, by the name, style, and firm of WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } Covenant.

And now on this day came the parties by their attorneys, and

thereupon came a jury, to wit, James J. Waddill, John Gibson, John F. Saffold, Samuel Hally, Samuel Matthews, William Y. Turner, Andrew J. Dougherty, Henry Stephens, Jonathan D. Harris, James Fortenberry, William Billings, and William Hogan, twelve good and lawful men, who, after being duly sworn to try the issues joined, and after hearing the evidence and argument of counsel, and after mature deliberation had, finds the following verdict, to wit: we, the jury, find for the plaintiffs for the sum of one thousand two hundred and sixty-five dollars in damages. It is therefore considered by the Court that the said plaintiffs, as partners as aforesaid, do have and recover of and from the said defendant the sum of one thousand two hundred and sixty-five dollars in damages, assessed as aforesaid, together with all their costs in this behalf laid out and expended, and the defendant, in mercy, &c.

The following is the plaintiffs' demurrer to the defendant's fourth plea, to wit:

State of Arkansas, Jackson County.

Circuit Court, November Term, 1842.

WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant. } Covenant.

And the said plaintiffs saith, that the said fourth plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining his aforesaid action thereof against the said defendant, and that the said plaintiffs are not bound by law to answer the same, and this the said plaintiffs are ready to verify; wherefore, for reason of the insufficiency of said plea in this behalf, the said plaintiffs pray judgment and his damages by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to them, &c., and the said plaintiffs, according to the form of the statute in such case made and provided, and shows to the Court here the following causes of demurrer to the said fourth plea, that is to say, 1st. The plea is *irrevellant;* 2d. It does not answer the declaration; 3d. It is double; 4th. The plea sets forth nothing in bar of the plaintiff's action, and also the said fourth plea is illegal, informal, and insufficient, &c.

DENTON,
Attorney for Plaintiffs.

The demurrer is indorsed:

"Filed this 14th day of November, A. D. 1842.
"GREEN SILVY,
"Clerk."

On the 18th day of November, 1842, the defendant filed his motion for a new trial, which motion is in the words following (to wit):

State of Arkansas, County of Jackson.

In the Circuit Court, at the November Term, A. D. 1842.

NOADIAH MARSH
v.
WILLIAM C. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, &c.

And now at this day comes the said defendant by attorney, and moves the Court here for a new trial to be awarded him in this case, and for reasons shows to the Court here the following, to wit: 1st. Because the Court erred in overruling the motion by the said defendant, made to exclude the deposition of Henry L. Biscoe. 2d. Because the Court erred in overruling the motion by the said defendant, made to exclude the answers to the 1st, 2d, and 3d interrogatories in the above deposition mentioned. 4. Because the Court erred in excluding the transcript of the record of the land office, at Helena, Arkansas. 5th. Because the Jury found contrary to law and evidence; for these and further reasons the said defendant prays that a new trial may be awarded in the said case.

HAGGARD, POPE, & PATTERSON,
Attorneys for Defendants.

Which motion for a new trial is indorsed as follows, to wit:

"Filed in open Court, 18th day of November, 1842.

"G. SILVY,
"Clerk."

And on the 18th day of November, 1842, the following proceedings were had, as appears of record (to wit):

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, &c.,
v.
NOADIAH MARSH.
Covenant.

This day come the parties by their attorneys, and the defendant moved the Court to set aside the verdict of the Jury herein rendered, and grant a new trial in this cause, which being argued by counsel on both sides, and by the Court fully understood, it is therefore considered and ordered by the Court, that the verdict of the Jury be set aside, and a new trial be granted in this cause, to be had at the next Court, to which term this cause is continued; and it is further considered by the Court, that the costs abide the event of this suit.

On the 15th day of May, A. D. 1843, the following order was made in the case, to wit:

WILLIAM B. DUNCAN & Co.
v.
NOADIAH MARSH.
} Covenant.

And now on this day come the parties by their attorneys, and moved the Court for a continuance in this cause. Whereupon it is ordered by the Court, that this cause stand continued until the next term of this Court by the consent of the parties.

On the 18th day of May, 1843, the following order was made, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners, doing business under the name, style, and description of WILLIAM B. DUNCAN & Co.,
v.
NOADIAH MARSH.
} Covenant.

Now on this day appeared the parties by their attorneys, and upon motion of the defendant, it is ruled that he have leave to take the depositions of witnesses, to be read as evidence on the trial of this cause before any Judge or Justice of the Peace within the United States, and that a dedimus issue therefor.

On the 13th day of November, 1843, the following order was made, to wit:

WM. B. DUNCAN & Co.
v.
NOADIAH MARSH.
} Covenant.

And now on this day come the parties by their attorneys, and by consent of the parties this cause is continued until the next term of this Court, with leave to the defendants to file additional pleas.

And upon the 30th day of July, A. D. 1844, it being the day in the caption hereof named, the following proceedings were had, as appears of record, to wit:

WILLIAM B. DUNCAN, FRANCIS SURGET, JOHN KER, and STEPHEN DUNCAN, partners in trade, and trading and doing business by the name, style, and firm of WILLIAM B. DUNCAN & Co., Plaintiffs,
v.
NOADIAH MARSH, Defendant.
} Covenant.

And now on this day come the parties by their attorneys, and the defendant by leave of the Court filed his plea of bankruptcy, to which the plaintiffs joined issue, all in short upon the record, by consent of

the parties; and neither party requiring a Jury, this cause was submitted to the Court upon the issues joined; whereupon the Court, after hearing the evidence and allegations of the parties, and the premises being seen and fully understood, found for the defendant. It is therefore considered and adjudged by the Court here, that the said defendant go hence without, and do have and recover of and from the said plaintiffs, all his costs on this behalf expended, and the plaintiffs in mercy, &c.

On the 13th day of April, A. D. 1846, the defendant obtained an execution to be issued on the above judgment, which execution, indorsements, and sheriff's return thereon, are in the words and figures following, to wit:

Jackson County, *sct.*

The State of Arkansas, to the Sheriff of Jackson County, State of Arkansas, greeting.

Whereas Noadiah Marsh, on the 30th day of July, in the year of our Lord one thousand eight hundred and forty-four, at our Circuit Court, hath recovered against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business under the name, style, and description of "William B. Duncan & Co.," all his costs expended in and about a certain suit instituted in said Court by said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of "William B. Duncan & Co.," plaintiffs, against the said Noadiah Marsh, defendant of a plea of breach of covenant, which costs of the said Noadiah Marsh, in and about said suit has been taxed to the sum of thirty-seven dollars and eighty-five cents, which were then and there adjudged to him for his costs sustained in the said suit.

You are therefore commanded that of the goods and chattels, lands and tenements of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, you cause to be made the costs aforesaid, and that you have the same before our said Circuit Court on the nineteenth day of May next (1846), it being the second day of the next Term of our Circuit Court, to satisfy the costs aforesaid, and that you then and there certify how you have executed this writ.

In testimony whereof I, William Y. Haggard, Clerk of the Circuit Court within and for the County of Jackson aforesaid, as such clerk, have hereunto set my hand and affixed the judicial seal of said Circuit Court at my office, this 13th day of April, A. D. 1846.

[L. S.]
[SEAL OF THE COURT.]

WM. Y. HAGGARD,
Clerk.

Bill of the defendants costs as taxed, and to whom due.

1840. John C. Saylors, clerk.

To filing three pleas each 10 cts.,		$ 30
Motion for leave to amend,		25
Entering order of leave to amend,		25
Entering issue to three pleas 25 each,		75
Order to take depositions,		25
Entering of continuance,		25
		$2 05

1841. Wm. Y. Haggard, clerk.

	Affidavit for continuance,	$ 25
	Order of continuance,	25
	Issuing subpœna for L. B. Tully,	50
	Motion and rule to take depositions,	50
	Issuing commission to take depositions,	1 00
	Issuing subpœna for A. W. Lyon,	50
	Commission to take deposition,	1 00
	Continuance,	25
1842.	Filing motion and rule to amend,	25
	Entering order to amend,	25
	Filing amended plea,	10
	Entering continuance,	25
		$5 10

Nov. 1842. To Green Silvy, clerk.

	To filing two bills of exceptions,	$ 10
	To filing motion for new trial,	05
	To entering order of new trial,	25
	" order of continuance,	15
1843.	Motion, affidavit, and rule for continuance,	20
	Entering order of continuance,	15
	Motion, rule, and order to take depositions,	20
1844.	To filing plea of bankruptcy and issue,	20
	Appearance of the parties,	10
	Trial before the Court without Jury,	25
	Entering judgment,	37½
	Transcribing judgment in Judgment Docket,	37½
		$2 20

To Henry A. Engels, sheriff of Independence County, for serving subpœna on A. W. Lyon, ... $ 50

A. W. Lyon, of Batesville, witness for Def't, May Term, 1841, 60 miles circular, and 3 days, ... 6 00

Nov. Term, 1841, 60 miles circular, and 4 days, . . . 7 00

May Term, 1842, 60 miles, and 4 days,	7 00
Nov. Term, 1842, 60 miles and 4 days,	7 00
	$28 00
Total costs of the defendants,	$37 85

Test. WM. Y. HAGGARD, Clerk.

Bill of costs taxed to N. Marsh, for which he has judgment;

John C. Saylors, clerk,	$2 05
Wm. Y. Haggard, clerk,	5 10
Green Sylvia, clerk,	2 20
H. A. Engles, sheriff of In.,	50
A. W. Lyon, witness,	28 00
Total,	$37 85
This writ,	75
Total,	$38 60
County Tax,	50
	$39 10

Test. WM. Y. HAGGARD, Clerk.

Upon which execution the sheriff made the following return, to wit:

Jackson County *sct.*

I, John H. T. Webb, Sheriff of Jackson County, State of Arkansas, do hereby certify that this execution come to my hands, as such sheriff, on the thirteenth day of April, A. D. 1846, to be by me, as such sheriff, of Jackson County aforesaid, executed in due form of law, and in obedience to the command of said writ of execution (there being no personal property found within my county of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, late partners, doing business under the name, style, and description of "William B. Duncan & Co.," whereof to make the costs in said writ of execution mentioned), I, as such sheriff of Jackson County, State of Arkansas, levied said writ of execution upon and seized, by virtue of said execution, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, the following described lands and tenements lying, being, and situate in the County of Jackson aforesaid, as the property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners aforesaid, late doing business by the name, style, and description of William B. Duncan & Co." to satisfy said execution, which lands and tenements so seized and levied upon as aforesaid, are more particularly described as follows, to wit:

The southeast quarter of section number nine, in Township number eight north, of Range number three west, containing one hundred and sixty acres; also the southwest quarter of the same section, township, and range, containing one hundred and sixty acres; also the southeast quarter of section number ten, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the said section number ten, in the same township and range; also the southeast quarter of section number fifteen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number fifteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section fifteen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section fifteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number seventeen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section seventeen, in the same township and range, one hundred and sixty acres; also the southeast quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section eight, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section twenty-nine, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section twenty-nine, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section twenty-nine, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section twenty-nine, in the same township and range, containing one hundred and sixty acres; also fractional section thirty, in the same township and range, containing six hundred and twenty-nine and 3-100 acres; also fractional section number one, in the same township and range, containing six hundred and forty-one and 6-100 acres; also the northeast quarter of section number two, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number two, in the same township and range,

containing one hundred and sixty acres; also the southwest quarter of section number eighteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section eighteen, in the same township and range, containing one hundred and sixty acres; also the west half of the northeast quarter of section eighteen, in the same township and range, containing eighty acres; also the west half of the southeast quarter of section eighteen, in the same township and range, containing eighty acres; also the northeast quarter of section number nineteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section nineteen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section nineteen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section nineteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section eight, in the same township and range, containing one hundred and sixty acres; also fractional section number five, in the same township and range, containing five hundred and sixty-three and 82-100 acres; also the northwest quarter of section number nine, in the same township and range, containing one hundred and sixty acres; also, the west half of the northeast quarter of section nine, in the same towship and range, containing eighty acres; also, section number thirty, in township number seven north, of range number three west; also, the northeast quarter of section twenty-four, in the last above-named township and range, containing one hundred and sixty acres; also, the northwest quarter of section twenty-four, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southeast quarter of section twenty-four, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southwest quarter of section twenty-four, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northeast quarter of section thirty-six, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northwest quarter of section thirty-six, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southwest quarter of section thirty-six, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southeast quarter of section thirty-six, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northwest quarter of section number twenty, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northeast quarter of section twenty, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southeast quarter of section twenty, in the last abovenamed township and range, containing one

hundred and sixty acres; also, the southwest quarter of section twenty, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northeast quarter of section number eight, in the last abovenamed township and range, containing one hundred and sixty acres; also, the northwest quarter of section eight, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southwest quarter of section eight, in the last abovenamed township and range, containing one hundred and sixty acres; also, the southeast quarter of eight, in the last abovenamed township and range, containing one hundred and sixty acres; also, section number four, in township number twelve north, of range number two west, and sections number seven and nine, in the last abovenamed township and range; also, sections number ten and fifteen, in township number twelve north, of range three west; and the southwest quarter of fractional section number four, in township number eight north, of range number three west; each and every one of which tracts were seized and levied upon by me, as such sheriff, by virtue of said execution to me directed, to satisfy the same. And in pursuance of the command of said writ of execution and levy, I, as such sheriff, after having first advertised said lands and tenements, according to law, by putting in three of the most public places in each township in the County of Jackson, more than *than* twenty days previous to the day of sale, written advertisements, and also one upon the court-house door of said County of Jackson; each of which written advertisements particularly described the above described lands *lands* and tenements levied upon as aforesaid, and the parties to the within execution, and stated that by virtue of said writ of execution to me directed, I, as such sheriff, would expose the lands and tenements to public sale, at the court-house door, in the County of Jackson aforesaid, to the highest bidder for cash in hand, on Monday, the eighteenth day of May, A. D. 1846, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of said day, expose to sale by public auction, to the highest bidder, for cash in hand, each of said tracts of land so levied upon as aforesaid, separately. And William Byers then and there bid for the S. W. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents; for N. W. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents; for W. ½ of the N. E. ¼ of Sec. 18, T. 8, N. of R. 3 W., the sum of twelve and a half cents; for W. ½ of the S. E. ¼ Sec. 18, T. 8 N., of R. 3 W., the sum of twelve and a half cents.

For S. E. ¼ Sec. 9, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 10, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 10, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 15, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 17, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 22, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 29, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For fractional section 30, T. 8 N., of R. 3 W., 629 5-100 acres, 25 cents.

For fractional section 1, T. 8 N., of R. 3 W., 641 6-100 acres, 25 cents.

For the N. E. ¼ Sec. 2, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 2, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. W. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the S. E. ¼ Sec. 19, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. W. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

For the N. E. ¼ Sec. 8, T. 8 N., of R. 3 W., 160 acres, 12½ cents.
For fractional Sec. 5, T. 8 N., of R. 3 W., 563 82-100 acres, 25 cents.
For the N. W. ¼ Sec. 9, T. 8 N., of R. 3 W., 160 acres, 12½ cents.
For the W. ½ of the N. E. ¼ Sec. 9, T. 8 N., of R. 3 W., 80 acres, 12½ cents.
For Section 30, T. 7 N., of R. 3 W., 640 acres, 25 cents.
For the N. E. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 24, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 36, T. 7 N. of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 36, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 20, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. E. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the N. W. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. W. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For the S. E. ¼ Sec. 8, T. 7 N., of R. 3 W., 160 acres, 12½ cents.
For Section 4, T. 12 N., of R. 2 W., 564 69-100 acres, 25 cents.
For Section 7, T. 12 N., of R. 2 W., 640 acres, 25 cents.
For Section 9, T. 12 N., of R. 2 W., 640 acres, 25 cents.
For Section 10, T. 12 N., of R. 3 W., 640 acres, 25 cents.
For Section 15, T. 12 N., of R. 3 W., 640 acres, 50 cents.
For the S. W. ¼ frl. Sec. 4, T. 8 N., of R. 3 W., 160 acres, 12½ cents.

And the said William Byers then and there bid for each of said tracts separately the sum aforesaid affixed to each tract, and he the said William Byers being the highest, best, and last bidder, for each of the above-named and described tracts of land, I, as such sheriff, struck off and sold each of the said tracts to him the said Byers separately for his bids aforesaid, the aggregate of which said bids amounts to the sum of eight dollars and eighty-seven and a half cents,

which said sum of eight dollars eighty-seven and a half cents, the said William Byers then and there paid to me as such sheriff. And at the same time and place, Andrew J. Dougherty bid for the S. W. ¼ of Sec. 9, T. 8 N., of R. 3 W., the sum of 13 cents, and for the S. E. ¼ Sec. 15, T. 8, of R. 3 W. the sum of 13 cents, and he the said Andrew J. Dougherty being the highest, best, and last bidder for each of said last-mentioned tracts of lands, I, as such sheriff, sold and struck the same off to him the said Dougherty at that price, and he the said Dougherty's bids, for said two tracts of land, amounted to the sum of twenty-six cents, the said Dougherty then and there paid to me as such sheriff. The whole amount of money made on the within execution by the sale of the said lands levied upon as aforesaid, is nine dollars and thirteen and a half cents, which said sum I have now before your honorable Court, to be applied towards the payment and satisfaction of the costs in said execution mentioned, and the residue of said costs I cannot have before your honorable Court to satisfy said writ, because all the lands and tenements which were levied upon have been sold, and did not bring a sufficient amount to satisfy said costs. I therefore return this execution as unsatisfied as to the residue of the costs, after deducting the amount made by the sale of said lands.

JOHN H. T. WEBB,
Sheriff of Jackson County.

Sheriff fees.	
Levying, . .	$0 75
Advertising, . .	75
Returning this writ,	75
Commission, . .	9
	$2 34

Upon the foregoing execution there is a receipt indorsed as follows, to wit:

"Received of John H. T. Webb, Sheriff of Jackson County, five dollars and forty-eight cents, the amount made by sale of lands in the within writ to William Byers, except his fees as sheriff, which amount to the sum of $2 34, this 19th day of May, A. D. 1846.

"BYERS & PATTERSON,
"Attorneys for N. Marsh."

There is also filed with the said execution a receipt from A. W. Lyon, which is as follows, to wit:

"Received of Byers and Patterson the sum of five dollars and forty-eight cents on fees due me as a witness on the part of the defendant in the case of William B. Duncan & Co. v. Noadiah Marsh, breach of covenant, determined in the Jackson County Circuit Court, it being the amount received by them from John H. T. Webb, sheriff of Jackson, and made by him as such sheriff on execution against said plaintiffs, October 20th, 1846.

"A. W. LYON."

In the Jackson County Circuit Court, at the November Term thereof, A. D. 1846.

Be it remembered, that, on this 17th day of November, personally appeared in open Court, John H. T. Webb, late High Sheriff of the County of Jackson, and who is personally well known to the Court as such, and presented to the Court here a deed executed to William Byers, by him the said John H. T. Webb, as such sheriff, whereby he, as such sheriff, by virtue of an execution to him directed, in favor of Noadiah Marsh against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, doing business under the name, style, and description of William B. Duncan & Co., he, the said John H. T. Webb, as such sheriff, had levied and sold to William Byers the following described lands and tenements, to wit: the southeast quarter of eighteen, Township 8 north, of Range 3 west; the northwest quarterof Section 18, Township 8 north, of Range 3 west; the west half of the northeast quarter of Section 18, Township 8 north, Range 3 west; the west half of the southeast quarter of section eighteen, Township 8 north, of Range 3 west; the southeast quarter of section nine, Township eight north, of Range three west; southeast quarter of section ten, of Township eight north, of Range three west; the southwest quarter of section ten, Township eight north, Range three west; west quarter section fifteen, Township eight north, of Range three west; northwest quarter section fifteen, Township eight north, Range three west; the southeast quarter of section fifteen, Township eight north, Range three west; southwest quarter section seventeen, Township eight north, Range three west; southeast quarter section seventeen, Township eight north, Range three west; northeast quarter of section seventeen, Township eight north, of Range three west; southwest quarter section seventeen, Township eight north, Range three west; the section twenty-two, Township eight north, Range three west; the south half of section eight, Township eight north, of Range three west; the section twenty-nine, in Township eight north, Range three west; the fractional section thirty, Township eight north, Range three west; a fractional section one, Township eight, Range three west; the northeast quarter of section two, Township eight north, of range three west; southeast quarter of section two, Township eight north, of Range three west; the section nineteen, Township eight north, of Range three west; north half of section *section* eight, Township eight north, of Range three west; fractional section five, in Township eight north, of Range three west; the northwest quarter of nine, Township eight north, Range three west; the west half of the northeast quarter of section nine, Township eight north, Range three west; section thirty, Township seven north, Range three west; section twenty-four, Township seven north, Range three west; the section thirty-six, in Township seven Range three west; the section twenty, Township seven north, of

Range three west; section eight, Township seven north, of Range three west; the fractional section four, Township twelve north, of Range two west; section seven, Township twelve north, of Range two west; the section nine, Township twelve north, of Range two west; the section ten, in Township twelve north, of Range three west; the section fifteen, Township twelve north, of Range three west; and the southwest quarter of fractional section four, Township eight north, of Range three west; all lying and being in the County of Jackson, and the State of Arkansas; and the said John H. T. Webb, as such sheriff, acknowledged and *sated*, in open Court here, that he had executed and delivered said deed of conveyance to said William Byers, for the consideration, uses, and purposes therein expressed and set forth, and desired that the same may be certified.

Whereupon, on motion of William Byers, it is by the Court ordered, that said acknowledgment be spread upon the records of this Court, and indorsed upon the said deed, certified under the seal of this Court, and that said deed of conveyance be admitted to record.

State of Arkansas, County of Jackson, *ss.*

I, Atrides Crow, Clerk of the Circuit Court within and for said County of Jackson, do hereby certify that the foregoing is a true transcript of the record and proceedings had in the above-entitled case of William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, doing business by the name, style, and firm of "William B. Duncan & Co." *v.* Noadiah Marsh, breach of covenant, together with the execution issued on said judgment, and the indorsements thereon, together with the sheriff's return, and all the proceedings had in said case, which on file, and appear of record in my office.

In testimony whereof I, Atrides Crow, Clerk of the Circuit Court, within and for the County of Jackson aforesaid, [L. S.] have hereunto set my hand as such Clerk, and affixed the seal of said Circuit Court, this 14th day of June, A. D. 1847.

ATRIDES CROW,
Clerk.

Filed 3d January, 1848.

WM. FIELD,
Clerk.
By JNO. T. TRIGG,
Deputy Clerk.

Exhibit F.

Exhibit F., a part of the answer of William Byers to the bill of complaint of Francis Surget.

To all persons to whom these presents may come, I, John H. T. Webb, as Sheriff of Jackson County, State of Arkansas, send greeting:

For that whereas, Noadiah Marsh, by the judgment and consideration of the Circuit Court, within and for the County of Jackson, in the State of Arkansas, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-four, recovered judgment against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, doing business under the name, style, and description, of "William B. Duncan & Co.," all his costs expended in and about a certain suit instituted in the said Circuit Court of Jackson County, by the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm, of "William B. Duncan & Co.," plaintiffs, against said Noadiah Marsh, defendant, of a plea of breach of covenant, which costs of the said Noadiah Marsh in and about the said suit, which were by said Circuit Court adjudged to him as aforesaid, were taxed to the sum of thirty-seven dollars and eighty-five cents; and the said costs remaining wholly unpaid and unsatisfied, and the said judgment being in full force and effect, the said Noadiah Marsh afterwards, to wit, on the 13th day of April, A. D. 1846, for the obtaining satisfaction of said judgment, procured to be issued from the office of the Clerk of said Circuit Court of Jackson County aforesaid, a writ of execution, commonly called a writ of *fieri facias*, against the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of William B. Duncan & Co., which said writ of execution so issued as aforesaid, ran in the name of "the State of Arkansas," and was directed to the Sheriff of Jackson County, State of Arkansas, and which said execution recited that, whereas, Noadiah Marsh, on the 30th day of July, in the year of our Lord one thousand eight hundred and forty-four, at our Circuit Court, hath recovered against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners, and doing business under the name, style, and description, of "William B. Duncan & Co.," all his costs expended in and about a certain suit instituted in said Court, by William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners in trade, and trading and doing business by the name, style, and firm of "William B. Duncan & Co.," plaintiffs, against the said Noadiah Marsh, defendant, of a plea of breach of covenant, which costs of the said Noadiah Marsh in and about said suit has been taxed to the sum of thirty-seven dollars and eighty-five cents, which were then and there adjudged to him for his costs sustained in the said suit, and the said writ of execution, after reciting as aforesaid, commanded the said Sheriff of Jackson County aforesaid, to whom said writ was directed, that of the goods and chattels, lands and tenements, of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, he should cause to be made the costs aforesaid, and that he should have the same before the said Circuit Court of Jackson County, on the nineteenth day of May next, after

the date of said writ of execution, it being the 19th day of May, A. D. 1846, and the second day of the May Term of said Circuit Court for the year A. D. 1846, to satisfy the costs aforesaid, and that he then and there should certify how he had executed said writ. The said writ of execution so issued as aforesaid, was dated and bore date the 13th day of April, A. D. 1846, and was under the judicial seal of said Circuit Court of Jackson County, and duly sealed and attested by the Clerk of said Circuit Court, and the fees due to each officer and other person, costs of the said Noadiah Marsh, expended in and about said suit, was by the Clerk of said Circuit Court, indorsed upon said writ of execution, according to the form of the statute in such case made and provided, and the said writ of execution was in all things in due form of law. And whereas, afterwards, to wit, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, the said writ of execution issued as aforesaid, came to the hands of John H. T. Webb, as Sheriff of Jackson County, State of Arkansas (he, the said John H. T. Webb, then being and still continued to be such Sheriff, until long after the return day of said writ of execution), to be by him as such Sheriff of Jackson County aforesaid, executed in due form of law. And whereas, afterwards, to wit, on the 13th day of April, A. D. 1846, at the County of Jackson aforesaid, in obedience to the command of said writ of execution, and to make the costs aforesaid (there being no personal property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, doing business under the name style, and description of "William B. Duncan & Co.," to be found within my County), I, John H. T. Webb, as Sheriff of Jackson County aforesaid, levied said writ of execution upon and seized, by virtue of said writ of execution, the following described lands and tenements, lying, being, and situate in the County of Jackson aforesaid, as the property of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, late doing business by the name, style, and description of "William B. Duncan & Co.," to satisfy said writ of execution, which said lands and tenements, so seized and levied upon by virtue of said writ of execution as aforesaid, are more particularly described as follows, to wit:

The southeast quarter of section number nine, in Township number eight north, of Range number three west, containing one hundred and sixty acres; also the southwest quarter of the same section, township, and range, containing one hundred and sixty acres; also the southeast quarter of section number ten, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the last-mentioned section, township, and range, containing one hundred and sixty acres; also the southeast quarter of section number fifteen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number fifteen, in the same township and range, containing one

hundred and sixty acres; also the northwest quarter of section fifteen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of said section fifteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number seventeen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of said section seventeen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section seventeen, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of the said section, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of said section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of said section number twenty-two, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of said section twenty-two, in said township and range, containing one hundred and sixty acres; also the southeast quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the section number eight, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of the said section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of said section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of said section number twenty-nine, in the same township and range, containing one hundred and sixty acres; also fractional section number thirty, in the same township and range, containing six hundred and twenty-nine and 3-100 acres; also fractional section number one, in the same township and range, containing six hundred and forty-one and 6-100 acres; also the northeast quarter of section number two, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number two, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number eighteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number eighteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section *of section* eighteen, in the same township and range, containing one hundred and sixty acres; also the west half of the northeast quarter of section number eighteen, in the same township and range, containing eighty acres; also the west

half of the southeast quarter of section number eighteen, containing eighty acres; also the northeast quarter of section number nineteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter of section number nineteen, in the same township and range, containing one hundred and sixty acres; also the southwest quarter of section number nineteen, in the same township and range, containing one hundred and sixty acres; also the southeast quarter of section number nineteen, in the same township and range, containing one hundred and sixty acres; also the northwest quarter number eight, in the same township and range, containing one hundred and sixty acres; also the northeast quarter of section number eight, in the same township and range, containing one hundred and sixty acres; also fractional section number five, in the same township and range, containing five hundred and sixty-three and 82-100 acres; also the northwest quarter of section number nine, in the same township and range, containing one hundred and sixty acres; also the west half of the northeast quarter of section number nine, in the same township and range, containing eighty acres; also section number thirty, in township No. number seven (7) north, of Range number three west, containing six hundred and forty acres, more or less; also the northeast quarter of section number twenty-four, in the last above-mentioned township and range, containing one hundred and sixty acres; also the northwest quarter of section number twenty four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the southeast quarter of section twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the southwest quarter of section twenty-four, in the last above-mentioned Township and Range, containing one hundred and sixty acres; also the northeast quarter of section number thirty-six, in the last above-named Township and Range, containing one hundred and sixty acres; also the northwest quarter of said section thirty-six, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of said section thirty-six, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of said section thirty-six, in the last above-named Township and Range, containing one hundred and sixty acres; also the northwest quarter of section number twenty, in the last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of said section twenty, in said last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of said section twenty, in the said last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of said section twenty, in the said last above-named Township and Range, containing one hundred and sixty acres; also the northeast quarter of section number eight, in the last above-named

Township and Range, containing one hundred and sixty acres; also the northwest quarter of said section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southwest quarter of said section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also the southeast quarter of said section eight, in the last above-named Township and Range, containing one hundred and sixty acres; also section number four, in Township number twelve north, of Range two west, containing five hundred and sixty-four and $\frac{69}{100}$ acres, more or less; also section number seven, in Township number twelve north, of Range number two west, containing six hundred and forty acres, more or less; also section number nine, in said Township number twelve north, of Range number two west, containing six hundred and forty acres; also section number ten, in Township number twelve north, of Range number three west, containing six hundred and forty acres; also section number fifteen, in said Township number twelve north, of Range number three west, containing six hundred and forty acres; also the southwest quarter of fractional section number four, in Township number eight north, of Range number three west, containing one hundred and sixty acres: all of which lands and tenements are situate in Jackson County aforesaid, and each and every one of said tracts of land were by me, John H. T. Webb, as such Sheriff of Jackson County, levied upon and seized by virtue of said execution to me directed, and were by me taken in execution as aforesaid, for the satisfaction of said execution, and for to make the costs aforesaid, adjudged to the said Noadiah Marsh against the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners as aforesaid, doing business by the name, style, and description of "William B. Duncan & Co." And whereas, in pursuance to the command of said writ of excution, and levy and seizure of said lands and tenements as aforesaid, I, John H. T. Webb, as Sheriff of said County of Jackson, after first having given notice of the time and place of the sale of said lands and tenements, according to law, by putting up in three of the most public places in each Township in the said County of Jackson, and also one upon the court-house door of said County of Jackson, more than twenty days previous to the day of the sale, written advertisements, each of which written advertisements particularly described the above-described lands and tenements levied upon as aforesaid, and the parties to said writ of execution; and gave notice and stated, that by virtue of said writ of execution and levy aforesaid, that I, John H. T. Webb, as Sheriff as aforesaid, would expose the said lands and tenements so levied upon as aforesaid to public sale, at the court-house door in the Town of Elizabeth and County of Jackson aforesaid, to the highest bidder for cash in hand, on Monday, the eighteenth day of May, A. D. 1846, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, it being the first day of the then

next term of the Circuit Court within and for said County of Jackson, after the said levy upon said lands, it being the first day of the commonly called May Term of said Circuit Court in said County of Jackson, A. D. 1846, each of which advertisements were put up more than twenty days previous to the said 18th day of May, A. D. 1846; in pursuance to said levy and notices, I, John H. T. Webb, as Sheriff of the County of Jackson aforesaid, did on the said eighteenth day of May, A. D. 1846, it being the first day of the Circuit Court of the County of Jackson aforesaid, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon of that day, at the court-house door (for the said County of Jackson), in the Town of Elizabeth, in the said County of Jackson, expose to public sale by public auction and outcry, to the highest bidder for cash in hand, each of said tracts of land so levied upon and advertised as aforesaid, *seperately*. And William Byers then and there bid for the following described tracts of land, levied upon as aforesaid, the sums following (to wit):

For the S. W. ¼ of section 18, in T. 8 N., of R. 3 W., the sum of 12½ cents; for the N. W. ¼ of section 18, in T. 8 N., of R. 3 W., the sum of 12½ cents; for the W. ½ of the N. E. ¼ of Sec. 18, T. 8 N., of R. 3 W., the sum of 12½ cents; for the W. ½ of the S. E. ¼, Sec. 18, T. 8 N., of R. 3 W., 80 acres, the sum of 12½ cents; for the S. E. quarter of Sec. 9, T. 8 N., of R. 3 W., 160 acres, the sum of 12½ cents; for the southeast quarter of section ten, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section ten, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section fifteen, township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section fifteen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section fifteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section seventeen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section seventeen, Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section seventeen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section seventeen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section number twenty-two, in Township eight north, of Range three

west containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty-two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section number eight, in Township No. eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section eight, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for fractional section thirty, in Township eight north, of Range three west, containing six hundred and twenty-nine 3-100 acres, for the sum of twenty-five cents; for fractional section number one, in Township eight north, of Range three west, containing six hundred and forty-one and 6-100 acres, the sum of twenty-five cents; for the northeast quarter of section number two, in Township number eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section number two, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section number nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section nineteen, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section number eight, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a

half cents; for the northeast quarter of section eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for fractional section number five, in Township eight north, of Range three west, containing five hundred and sixty-three and 82-100 acres, the sum of twenty-five cents; for the northwest quarter of section nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the west half of the northeast quarter of section nine, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for section thirty, in Township number seven north, of Range three west, containing six hundred and forty acres, more or less, the sum of twenty-five cents; for the northeast quarter of section twenty-four, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty-four, in Township seven north, of Range *of Range* three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty-four, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty-four, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section thirty-six, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section thirty-six, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section thirty-six, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section thirty-six, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section twenty, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northeast quarter of section twenty, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section twenty, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section twenty, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half; for the northeast quarter of section eight, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the northwest quarter of section eight, in Township seven north, of

Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southwest quarter of section eight, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for the southeast quarter of section eight, in Township seven north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents; for section four, in Township number twelve north, of Range number two west, the sum of twenty-five cents; for section number seven, in Township twelve north, of Range two west, containing six hundred and forty acres, the sum of twenty-five cents; for section number nine, in Township twelve north, of Range two west, containing six hundred and forty acres, the sum of twenty-five cents; for section number ten, in Township number twelve north, of Range number three west, containing six hundred and forty acres, the sum of fifty cents; for section number fifteen, in Township number fifteen, in Township number twelve north, of Range three west, containing six hundred and forty acres, the sum of fifty cents; for the southwest quarter of fractional section four, in Township eight north, of Range three west, containing one hundred and sixty acres, the sum of twelve and a half cents. The said above described tracts of land were by me, as such sheriff, set up, offered and exposed to sale separately, each tract, as above described as being bid for by the said Byers, were by me, as such sheriff, set up, offered for sale, and struck off, and sold separately to the said Byers, at and for his bids above-described, he being the highest, best, and last bidder for each of the above-described tracts for which he bid, each tract of land bid for by the said Byers, as above-described, was by me as such sheriff struck off and sold to him for the said sums affixed to each of said tracts, he being the highest, last, and best bidder for each of said tracts, each tract was by me, as such sheriff, struck off and sold to him separately (*i. e.*) each was by me offered, struck off, and sold separately, one struck off and sold before the other, was offered in succession, until the whole was sold; which several sums, bid by said Byers for said tracts of land, in the aggregate, amounts to the sum of eight dollars and eighty-seven and a half cents, the said Wm. Byers then and there paid me (John H. T. Webb) as such sheriff, it being the amount of his bids aforesaid, and the consideration for which I, as such sheriff, publicly, by public vendue and outcry, struck off and sold to him said lands and tenements, which said sum of eight dollars and eighty-seven and a half cents, I, as such sheriff, have applied to the payment of said costs in said writ of execution mentioned, as far said sum would pay the same. Therefore, be it known, that I, John H. T. Webb, in my capacity of sheriff of Jackson County, State of Arkansas, and by virtue of the authority vested in me by law, in consideration of the sum of eight dollars and eighty-seven and a half cents, to me, as such sheriff, in hand paid by William Byers, the receipt whereof is hereby acknowledged, and the said Byers forever

acquitted, and in consideration of the premises hereinbefore recited, have granted, bargained, and sold, and by these presents, do give, grant, bargain, sell and convey unto the said William Byers, and his heirs and assigns, forever, all, each, and every part and parcel of land bid off by him, and by me sold to him as herein above-mentioned, to wit: The southwest quarter of section eighteen, containing one hundred and sixty acres; the northwest quarter of section eighteen; the west half of the northeast quarter of section eighteen, and the west half of the southeast quarter of section eighteen; the southeast quarter of section nine; the southeast quarter of section ten; the southwest quarter of section ten; the southwest quarter of section fifteen, and northwest quarter of section fifteen, and the southwest quarter of section seventeen, and the southeast quarter of section seventeen, and northeast quarter of section seventeen, and the northwest quarter of section seventeen, and southeast quarter of section twenty-two, and the southwest quarter of section twenty-two, and the northwest quarter of section twenty-two, and the northeast quarter of section twenty-two, and the southeast quarter of section eight, and the southwest quarter of section eight, and the southeast quarter of section twenty-nine, and the southwest quarter of section twenty-nine, and the northeast quarter of section twenty-nine, and the northwest quarter of section twenty-nine, and fractional section thirty, and fractional section one, and the northeast quarter of section two, and the southeast quarter of section two, and the northeast quarter of section nineteen, and the northwest quarter of section nineteen, and the southwest quarter of section nineteen, and the southeast quarter of section nineteen, and the northwest quarter of section eight, and the northeast quarter of section eight, and fractional section five, and the northwest quarter of section nine, and the west half of the northeast quarter of section nine: all of which above-named tracts are in Township number eight north, of Range three west; also section thirty, in Township number seven north, of Range three west; also the northeast quarter of section twenty-four, and the northwest, southeast, and southwest quarters of said section twenty-four, in Township seven north, of Range three west, and the northeast quarter, northwest quarter, southwest quarter, and southeast quarter of section thirty-six, in Township seven north, of Range three west; also the northwest quarter, and northeast quarter, and southeast quarter, and southwest quarter of section twenty, in Township seven north, of Range three west; also the northeast and northwest, and the southeast and southwest quarters of section eight, in Township seven north, of Range three west; also section number four, in Township twelve north, of Range two west, and section number seven, in Township twelve north, of Range two west, and section number nine, in Township twelve north, of Range two west, and section number ten, in Township twelve north, of Range three west, and section number fifteen, in Township twelve north, of Range three west, and the southwest quarter of fractional

section four, in Township eight north, of Range three west, all of which tracts of land are lying, and being, and situate in the County of Jackson, and are the same tracts of land hereinbefore described, as being bid off by the said Byers, and by me, as sheriff aforesaid, sold to him by virtue of said writ of execution to me directed and by me levied upon said lands and tenements, as hereinbefore stated, and I, John H. S. Webb, as such sheriff, by virtue of the premises, do give, grant, bargain, and sell, and convey unto the said William Byers, his heirs and assigns, forever, all the right, title, interest, and estate of the said William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, late partners, doing business under the name, style, and description of "William B. Duncan & Co.," as either of them had in, to, or over the said described, granted, bargained, and sold lands and tenements, and every part and parcel thereof, as fully, completely, and amply as I, as such sheriff, ought, could, or should do by virtue of the premises hereinbefore stated, and by the law of the land.

To have, and to hold, the above given, granted, bargained, and sold lands, and tenements, and each and every tract, part and parcel thereof, together with all the improvements and appurtenances to the same in anywise belonging unto the said William Byers, his heirs and assigns, forever. And I, as such sheriff, do covenant to and with the said Byers, that in the levying upon said lands, and the advertising and selling of the same, that I have complied with all the *rule* and regulations prescribed by law for the selling of real estate under execution.

In testimony whereof, I, John H. T. Webb, as sheriff of Jackson County aforesaid, have hereunto set my hand and seal this 1st day of September, A. D. 1846.

JOHN H. T. WEBB, [SEAL.]
Sheriff of Jackson County, State of Arkansas.

Signed, sealed, and delivered in presence of
Attest, JOHN TONEY,
ATRIDES CROW.

At the Jackson County Circuit Court, at the November Term thereof, A. D. 1846.

Be it remembered, that on the 17th day of November personally appeared in open Court John H. T. Webb, late High Sheriff of the County of Jackson, and who is personally well known to the Court as such, and presented to the Court here a deed executed to William Byers by him the said John H. T. Webb, as such sheriff, whereby he, as such sheriff, by virtue of an execution to him directed, in favor of Noadiah Marsh, against William B. Duncan, Francis Surget, John Ker, and Stephen Duncan, partners doing business under the name, style, and description of William B. Duncan & Co., he, the said John H. T. Webb, as such sheriff, had levied and sold to William Byers the following described

lands and tenements, to wit: the southwest quarter of section eighteen, Township eight north, of range three west; the northwest quarter of section 18, Township 8 north, of 3 west. The west half of the northeast quarter of section 18, Township 8 north, of Range 3 west. The west half of the southeast quarter section 18, Township 8 north, of Range 3 west. The southeast quarter of section 9, Township 8 north, of Range 3 west. The southeast quarter section ten, Township 8 north, of Range 3 west. The southwest quarter of section 10, Township 8 north, of Range 3 west. The west quarter section 15, Township 8 north, of Range 3 west. The northwest quarter section 15, Township 8 north, Range 3 west. The northeast quarter of section 15, Township 8 north, Range 3 west. The southwest quarter section 17, Township 8 north, of Range 3 west. The southeast quarter of section 17, Township 8 north, of Range three west. The northeast quarter section 17, Township 8 north, of Range 3 west. The northwest quarter of section 17, Township 8 north, of Range 3 west. The section twenty-two (22), Township 8 north, of Range 3 west. The south half of section 8, Township 8 north, of Range 3 west. The section twenty-nine (29), Township 8 north, Range 3 west. The fractional section thirty (30), Township 8 north, of Range 3 west. The fractional section one, Township 8 north, of Range 3 west. The northeast quarter of section two, Township 8 north, of Range 3 west. The southeast quarter of section two, Township 8 north, of Range 3 west. The section 19, Township 8 north, of Range 3 west. The north half of section 8, Township 8 north, of Range 3 west. The fractional section five, Township 8 north, of Range 3 west. The northwest quarter of section nine, Township 8 north, of Range 3 west. The west half of the northeast quarter of section 9, Township 8 north, of Range 3 west. Section thirty (30), Township seven north, of Range 3 west. The section twenty-four (24), Township seven north, of Range three west. The section thirty-six (36), Township seven, Range 3 west. The section twenty (20), Township seven north, of 3 west. The section eight, Township seven north, of Range 3 west. The fractional section four, Township 12 north, of Range two west. The section seven (7), Township 12 north, of two west. The section nine (9), Township 12 north, of Range two west. The north section ten, Township 12 north, of Range three west. The section fifteen (15), Township 12 north, of Range 3 west, and the southwest quarter of fractional section four, Township 8 north, of Range 3 west; all lying and being in the County of Jackson and the State of Arkansas; and the said John H. T. Webb, as such sheriff, acknowledged and stated in open court here that he had executed and delivered the said deed of conveyance to the said William Byers for the consideration, uses, and purposes therein expressed and set forth, and desired that the same may be certified. Whereupon, on motion of the said William Byers, it is by the Court ordered that said acknowledgment be spread upon the records of this Court, and indorsed upon said deed, certified under

the seal of this Court, and that said deed of conveyance be admitted to record.

Jackson, *sct.*

I, Atrides Crow, Clerk of the Circuit Court in and for the County of Jackson aforesaid, do hereby certify that the foregoing indorsement is a true copy of the record of this acknowledgment.

In testimony whereof I have hereunto set my hand as said [SEAL.] clerk, and affixed the seal of the Court at office this 19th November, A. D. 1846.

ATRIDES CROW,
Clerk.

State of Arkansas, County of Jackson.

I, Atrides Crow, clerk of the Circuit Court, and ex officio recorder for the County of Jackson aforesaid, do hereby certify that the annexed and foregoing deed of conveyance was filed in my office for record on the nineteenth day of November, A. D. 1846, and the same is now duly recorded in Record Book "D," pages 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43.

In testimony whereof, I, Atrides Crow, Clerk of the Circuit Court, and ex officio recorder for the County of Jackson [SEAL.] aforesaid, have hereunto set my hand and affixed the seal of said Court at office this 10th day of December, A. D. 1846.

ATRIDES CROW,
Clerk.

Recording, . .	$4 50
Acknowledgment, .	50
Certificate and Seal, .	37½
	$5 37½

Received payment on the within this 25th day of January, 1847.

A. CROW,
Clerk.

Filed 3d January, 1848.

WM. FIELD,
Clerk.
By JNO. T. TRIGG,
Deputy Clerk.

United States of America, District of Arkansas, *sct.*

In the Circuit Court of the United States for the District of Arkansas, on the 9th day of May, 1848, at the April Term of said Court, A. D. 1848.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } In Chancery.

This day came the parties, by their solicitors, and thereupon, on

motion of the complainant, it is ordered, that each party have, and leave is hereby granted them until the first day of January next, to take the depositions of witnesses generally, before any judge or justice of the peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it further ordered, that this cause be and the same is hereby set for final hearing, at the next term of this Court, upon bill, answers, replications, exhibits, and testimony, to be taken in this behalf; until which time this cause is hereby continued.

A true copy from the record.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

And afterwards, to wit, on the 9th day of April, 1849, the following proceeding was had in said cause, to wit:

This day comes said defendant, Byers, by A. Fowler, Esq., his solicitor, and files his motion, in writing, for an enlargement of the time for taking testimony in this case; whereupon it is ordered, that the time for that purpose be accordingly allowed for six months from this date.

A true copy from the record.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

The United States of America, District of Arkansas, *set.*

The President of the United States to David W. Lowe, Commissioner, &c., greeting: You are hereby required to cause to come before you all witnesses whatever, and them diligently examine, on the foregoing interrogatories, on the part of said defendant, Byers, as well as of the complainant, in a certain suit now pending in our said Circuit Court, on the chancery side thereof, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, and that you then and there examine them apart, upon their respective corporeal oaths, first taken before you, on the Holy Evangelists, and that you reduce their examination to writing; and when you shall have so taken them, that you send the same, with this dedimus closed up under your seal, to our said Circuit Court, at Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit [L. S.] Court to be hereunto affixed, this 31st day of July, A. D. 1849, and in the 74th year of American Independence.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

The execution of this commission will appear by schedule hereto annexed, Sept. 21st, 1849.

D. W. LOWE,
Commissioner.

In the Circuit Court of the United States for the District of Arkansas. In vacation.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants.
} In Chancery.

Interrogatories to be administered to *witnesses*, to be produced, sworn, and examined in said cause, which is now pending and at issue between the said *Francis* and *William*, in the said Circuit Court, at Little Rock, Arkansas, on the part of the said defendant, *William Byers.*

1st Interrogatory. Do you know the parties, complainant and defendants, the caption hereof named, or any, and which of them respectively? Declare the truth of the several matters by this interrogatory, according to the best of your knowledge, remembrance, and belief.

2d. Do you, or not, know at what rates lands were usually sold, under execution and other judicial sales made by the Sheriff of Jackson County, and by the United States Marshal for the District of Arkansas, at the court-house in that County, about the month of May, A. D. 1846, and since that time and previous thereto, and whether or not lands so sold, or not lands sold there at public sale for cash, about that time, usually brought but a few cents per acre? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

3d. Were you, or not, present at the sale made by Sheriff *Webb*, of said County of Jackson, on the 18th day of May, A. D. 1846, of lands, as the property of the said complainant and others, under and execution in favor of *Noadiah Marsh;* and if so, were there or not, as many persons present at that sale as usually attend sales made at the same place, under execution by the Sheriff, Marshal, or Coroner? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance.

4th. Have you, or not, been in the habit of attending the sittings of the Circuit Court of said County of Jackson; and if so, how long, and were there, or not, as many persons in the town of Elizabeth, where said Courts are held, on the day that the sheriff sold said lands, as are usually there on the first day of the terms of that Circuit Court, or as usually attend the sales of the Sheriff, Marshal, or Coroner, under execution, at that place? Declare the truth of

the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

5th. Was there, or not, as much publicity given to the sale so made of said *lands*, before it took place, as is usually given to such sales at the same place? Declare *this* truth of the several matters by this interrogatory inquired, according to the best of your knowledge, remembrance, and belief.

6th. Do you know whether or not that said Sheriff Webb, on the said day of the sale of said lands, and before such sale took place, went around among the people, in different parts of said town of Elizabeth, and notified them verbally that such sale was about to take place, and requested them to attend; and if yea, do you know whether or not he did so at the instance of the said defendant, William Byers? Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge, remembrance, and belief.

7th. Did you or not see the said defendant, William Byers, present at said sale; and if yea, did he or not urge the persons then present to bid for said lands; and did he or not then there declare publicly to the people then present, as his opinion as a lawyer, that those who would purchase of said lands, so offered for sale, would get a good and valid title thereto? Declare the truth of these several matters, by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

8th. Do you know whether or not that it was generally expected and believed in said County of Jackson, until about the day of said sale, that the Judge of the Circuit Court would be present, and hold Court on that day; and did or did not the said sheriff of that county advertise his sale of lands and slaves, levied on by executions in his hands, to take place on that day, as he usually did on the first day of a term of the Circuit Court? Declare the truth of the several matters by this interrogatory inquired after according to the best of your knowledge, remembrance, and belief.

9th. Do you know whether or not there was any arrangement or understanding between the said defendant, Byers, and other attorneys then present and said Sheriff Webb, on the day of said sale, and before it took place, that all of such sales advertised on that day should be suspended; and if yea or nay, what conversation did then and there take place, in which said defendant, Byers, participated, concerning such an arrangement, whether in favor or against it? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

10th. Pending the said sale so made by said sheriff of said lands, did or did not Mr. William H. Morris, then residing at Elizabeth, where said sale was made, declare that of certain lands of the said Francis Surget, which were adjoining Samuel Garner's land, were

levied on and to be sold, that he Morris would buy them; and did or did not the said defendant, Byers, request the sheriff to let said Morris examine the numbers of such lands; and on examining the numbers, did or did not said Morris then say, that he could not tell whether they were the lands he wanted until he could go to his house and get a patent there; and did or did not the said Byers then request the sheriff to suspend the sale, and the sheriff suspended it at such *such* request, until said Morris could go and get said patent, and on said Morris's return, did or not declare that the lands he wanted to purchase were not levied on, and therefore he would not purchase? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

11th, and last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

July 13th, A. D. 1849.

A. FOWLER,
Solicitor for said William Byers.

Filed 13th, July, 1849.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

I, William Field, Clerk of the Circuit Court of the United States for the District of Arkansas, do hereby certify that the foregoing interrogatories, from 1 to 11, in the cause therein named, are truly copied from the originals now on file in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said Court, this 31st day of July, A. D. 1849, and the 74th year of American Independence.

[SEAL.]

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

The execution of the annexed and within commission appears by schedule hereto annexed, Sept. 21st, 1849.

D. W. LOWE,
Commissioner.

Depositions of witnesses, whose testimony is alleged to be necessary to the defendants in the cause hereinafter named, taken and subscribed before me, David W. Lowe, a commissioner duly appointed

for that purpose, in pursuance of a commission, and upon the interrogatories hereto annexed, issued out of the Circuit Court of the United States, for the District of Arkansas, on the Chancery side thereof, to be read as evidence in a certain cause depending in the said Court, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, on the part of said defendant, William Byers.

John Saffold, a witness, known to me to be of lawful age, being to me produced at the County of Jackson, and State of Arkansas, on the 23d day of August, A. D. 1849, and being by me first duly sworn, and cautioned to speak the whole truth, did then and there, upon his oath aforesaid, depose and answer each and all of the annexed interrogatories, which were separately put and read to him by me, as follows, to wit:

Answer to the first interrogatory, by John Safford. I am acquainted with the defendants in this cause, William Byers, and Andrew J. Dougherty; with the complainant I have no personal acquaintance.

Answer to 2d interrogatory. About the time of such sale, and before and after, lands sold under execution brought but a small sum, usually a trifle. I have been living in this County (Jackson) for a number of years, and have frequently attended judicial sales made by the Sheriff, and also of the Marshal of the State.

Answer to 3d interrogatory. I was not present at said sale, and do not know how many persons were present.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County for the last six or seven years, and was in the town of Elizabeth, the place of holding said Court, on the morning of the day that said sale was to take place, it being the first day of the session of said Court; and there was as many persons present as usually attend on the first day of the Circuit Court in said County. I attended on said morning on business, as the agent of W. W. Tunstall, concerning a negro girl, which had been levied upon by the Sheriff, under an execution in favor of said Tunstall, against John Frost, which negro was expected to be sold on that day, and Wm. C. Bevens as the attorney for said Frost being present, insisted that said sale should not proceed, and Wm. Byers, the above-named defendant, who was the attorney for said Tunstall, insisted that said sale should proceed, and the parties eventually compromised the matter, and said sale did not take place, and consequently I returned home, and did not attend the other sales which were to take place.

Answer to the 5th interrogatory. I do not know what publicity had been given to said sale, more than that I heard it spoken of that such a sale was to take place on said day.

Answer to 6th interrogatory. I do not know of the Sheriff going

out and giving notice of said sale; all that I do know is, I heard the sale spoken of, but do not know by whom.

Answer to 7th interrogatory. I do not know anything of the matters inquired of by this interrogatory, as I was not present.

Answer to 8th interrogatory. I did not know anything to the contrary, but that the Judge of said Court would be in attendance. I know that the Sheriff had advertised the sale of the slave referred to in my answer to 4th interrogatory, and do not know anything to the contrary, but that said Sheriff had also advertised other sales to take place on said day.

Answer to 9th interrogatory. I do not know of any such arrangement inquired of, more than what related to the sale of the negro referred to above, in my answer to 4th interrogatory.

Answer to 10th interrogatory. As I was not present at said sale, I do not know anything of the matters inquired of in this interrogatory.

Answer to 11th interrogatory. I do not know anything more that would be material to either of the parties in this cause, or the subject of this examination.

JOHN F. SAFFORD.

Sworn to and subscribed before me, this 23d day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid, appeared J. G. Witherspoon, a witness in the same case for said defendants; who being first duly sworn, deposes and says, as follows, to wit:

Answer to first interrogatory. I am acquainted with both the defendants in this cause. I have no acquaintance with the complainant.

Answer to 2d interrogatory. I am practising attorney at law, and have been in the habit of attending all the sessions of the Circuit Court in Jackson County, and I think I have been present at every Sheriff's sale, and perhaps every Marshal's sale made in said County of Jackson for the last four years, and I know, at such sales, lands generally sold very low, for a mere trifle, compared to its value; many cases not the tenth part of the government price for lands, and perhaps in many cases, not the one-twentieth part of such government price.

Answer to 3d interrogatory. To the best of my recollection and belief, I was present at said sale, and that at sometimes I have seen as many as fifty persons present at such sales, at other times not more than eight or ten, and at the sale mentioned in this interrogatory, I think some fifteen or twenty were present, and perhaps more.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of all the Circuit Courts in Jackson County, for the

last four years; and on the day that the Sheriff sold said lands, I think there were as many persons in the town of Elizabeth when said Courts are held, as usually attend on the first day of Court.

Answer to 5th interrogatory. I do not know what publicity had been given to said sale.

Answer to 6th interrogatory. I do not know anything of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I did see Wm. Byers, one of the defendants in this cause, present at said sale, and that he gave it as his opinion as a lawyer, that if the people would purchase said lands at said sale, they would obtain a good title, which remark was made, or opinion given, while the sale was progressing.

Answer to 8th interrogatory. I do not know what was generally believed about the Judge being in attendance to hold said Court; I have no distinct recollection, whether or not, the Sheriff advertised his sales, as usual, to take place on that day; I may have seen such advertisements, or I may not; I do not recollect.

Answer to 9th interrogatory. There was no such understanding or arrangement between the attorneys, to suspend said sales, to the best of my knowledge and belief; I was one of the attorneys, and if any such arrangement was made, it did not come to my knowledge, and I heard no such conversation in which said defendant, Byers, participated.

Answer to 10th interrogatory. I do not recollect anything of the matters and things inquired of by this interrogatory.

Answer to 11th interrogatory: I do not know anything more that would be material, or an advantage to either of the parties, in this cause, on the subject of this examination.

GRAHAM WITHERSPOON.

Sworn to and subscribed, before me, this 23d August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid appeared James J. Waddill, a witness in the same case for said defendants, who, being first duly sworn, deposes and says, as follows, to wit:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants; I have no personal acquaintance with the complainant, Surget.

Answer to 2d interrogatory. I have long resided in the County of Jackson, and for the last three years have been sheriff of said county, and have been in the habit of attending sales made by the sheriffs and marshals at the court-house in said county, for several years, and that lands generally sold very low, when sold under execution; perhaps but for a few cents per acre, or for a very trifling sum compared to their true value. I know of many cases where land

brought in a manner nothing, and in no instance do I recollect of its selling for anything like a fair price.

Answer to 3d interrogatory. I was not present at said sale and cannot say what number was present.

Answer to 4th interrogatory. I have generally been in the habit of attending the sittings of the Circuit Court in said county, but at the time referred to in this interrogatory, I was not present, and know nothing of the matters inquired of in said interrogatory.

Answer to 5th interrogatory. I do not know anything of the matters and things inquired of in this interrogatory.

Answer to 6th interrogatory. I do not know anything concerning the matters inquired of in this interrogatory, as I was not present.

Answer to 7th interrogatory. I do not know anything of the matters inquired of in this interrogatory, as I was not present.

Answer to 8th interrogatory. I know of several instances where the Judge of said Court failed to attend and hold said Court, and in one or two instances, it was understood or believed, beforehand, that said Judge would not be in attendance, and at other times, when he was expected, he failed to attend, but at the time referred to in this interrogatory, I do not remember, whether he was expected to be in attendance, or whether it was understood or believed beforehand, that he would not be in attendance or not; I do not know whether the sheriff of said county advertised his sales for that time as usual or not.

Answer to 9th interrogatory. I do not know anything of the matters inquired of this interrogatory.

Answer to 10th interrogatory. I do not know anything of the matters inquired of in this interrogatory.

Answer to 11th interrogatory. I do not know of anything more that would be material or of advantage to either party in this cause, or to the subject of this examination.

JAS. J. WADDILL.

Sworn to and subscribed, before me, this 23d August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid, appeared George Eder, a witness in the same case for said defendants, who, being duly sworn, depposes and says:

Answer to 1st interrogatory. I know William Byers and Andrew J. Dougherty, the defendants in this cause; I am not personally acquainted with the complainant, Surget.

Answer to 2d interrogatory. I have lived in the County of Jackson ever since the year 1836, and have frequently attended sales made by the sheriff, at the court-house in said county, and generally

when lands are sold under execution in said county, they sell for little or nothing in comparison to their value, or a very trifling sum; I know of many cases, where lands sold in a manner for nothing, and I do not recollect a single case, where land brought anything like a fair price, at sheriff's or marshal's sale.

Answer to 3d interrogatory. I was present at the sale referred to in this interrogatory; I cannot recollect as to the number of persons present, but there was a considerable number, perhaps 20 persons, and perhaps more, some inside of the court-house and some on the outside.

Answer to the 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court, in said county, ever since the year 1836, and was present at the time referred to in this interrogatory, and I think there was as many persons in the town of Elizabeth on said day, when said courts are held, as usually attend on the first day of Court, at that season of the year.

Answer to 5th interrogatory. There was as much publicity given to said sale as is usually given.

Answer to 6th interrogatory. I do not know as to the matters inquired of in this interrogatory.

Answer to 7th interrogatory. I saw the defendant, William Byers, present at said sale, and he was recommending to people to bid and make purchases, and give it as his opinion that if they would purchase they would get a good and valid title; I recollect distinctly that he stated that he had no doubt but that they would get a good title if they would buy.

Answer to 8th interrogatory. It was expected, as far as I know, that the Judge of said Court would be present as usual to hold said Court at that time; and the sheriff advertised land and slaves for sale which he had levied upon as usual, as far as I know, to take place on that day, and I myself saw a number of advertisements posted up of sales to take place on said day.

Answer to 9th interrogatory. I do not know anything concerning the matters inquired of in this interrogatory.

Answer to the 10th interrogatory. I recollect that Mr. Wm. H. Morris was present at said sale, and had a good deal to say, but do not recollect what he said about the sale, or what he did.

Answer to 11th interrogatory. I do not know of anything material, or that would be a benefit to either party, more than that I saw an advertisement by the sheriff posted up in the Town of Elizabeth, for the sale of the lands referred to.

GEORGE EDER.

Sworn to and subscribed before me, this 23d August, A. D. 1849.

D. W. LOWE,
Commissioner.

Ordered, that further proceedings herein be adjourned until to-morrow.

And on the 24th day of August, A. D. 1849, at the same place as aforesaid, appeared James M. Tunstall, a witness in the same cause for said defendants, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants in this cause; but am not personally acquainted with the said Francis Surget, the complainant.

Answer to 2d interrogatory. I know that in this county, generally speaking, lands sold under execution by sheriffs or marshals, usually sell very low, frequently for but a very few cents per acre; and at *and* about the time referred to in this interrogatory lands under execution sold very low.

Answer to 3d interrogatory. I was not present at said sale, and cannot say anything of the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County for several years, but was not present at the time referred to in this interrogatory, and cannot state as to the other matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know what publicity had been given as regards the sale of said lands, more than I saw one of the advertisements for the sale of said lands by said sheriff posted up on a storehouse door in the Town of Jacksonport, in said County of Jackson.

Answer to 6th interrogatory. As I was not present I cannot state as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. As I was not present I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I did not know to the contrary but that the Judge would be present to hold said Court; and I saw several advertisements set up in said County purporting to be for sales of property under execution by the sheriff, to sell at said term of the Court.

Answer to 9th interrogatory. I do not know anything of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I do not know anything of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I do not know of any other matter or thing that would be of any advantage or benefit to either of the parties to this suit, or the subject of this examination.

JAS. M. TUNSTALL.

Sworn to and subscribed before me, this 24th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place as aforesaid also appeared in the

same case, William H. Morris, a witness for said defendants, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants; but I am not personally acquainted with said Francis Surget, the complainant in this cause.

Answer to 2d interrogatory. I know that at sales made by sheriffs and marshals under execution in said County of Jackson, lands invariably sold very low, and at the time referred to the lands sold under execution far below their value.

Answer to 3d interrogatory. I have no recollection of being present at said sale, and cannot state as to the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have attended off and on the sittings of the Circuit Court for said County for several years; but as to the other matters inquired of by this interrogatory, I cannot state anything.

Answer to 5th interrogatory. I do not know as to what publicity had been given of said sale, and cannot state anything of the matters inquired of by this interrogatory.

Answer to 6th interrogatory. I reside in the town of Elizabeth, in said County of Jackson, and keep a store therein, and on the day of said sale, I think, proclamation was made at my store door by some person, and I am inclined to think it was Sheriff Webb, stating that he was about to proceed to sell a large quantity of lands, and invited me to attend the sale, but as to the other matters inquired of, I know nothing.

Answer to 7th interrogatory. I do not know anything of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I do not know anything as to the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I have no knowledge of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I have no recollection of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. In the month of April, 1843, I paid a fee bill for Noadiah Marsh amounting to six dollars and 27½ cents, $3 27 of which was in favor of G. Sylvia, Clerk, and $3 to W. F. Denton, for Jury fee, and also one other fee bill for $9 02; of the last-named one $5 02 was in favor of Wm. Y. Haggard, Clerk; and paid to A. M. Carpenter, Deputy Sheriff, $2 75, and the balance paid in money, which said fee bills accrued in a certain suit in which Wm. B. Duncan & Co. were plaintiffs, and Noadiah Marsh was defendant, in the Circuit Court of Jackson County, and one of which fee bills I paid by the order of said Marsh, and the other fee bill was levied by the Sheriff on the property of said Marsh, at a time when said Marsh was absent from home, and in order to save the property of said Marsh, in his absence, from being sold under said fee bill, I

paid the same for him, and released his property; said fee bills are the same which is referred to in my deposition taken on the part of the complainant in this suit—taken last December—and Marsh afterwards paid me the amount of said fee bills which I advanced for him, as above stated; I know nothing more that would be material or that would be a benefit to either of the parties to this suit, or to the subject of this examination.

WM. H. MORRIS.

Sworn to and subscribed before me, this 24th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid, also appeared Atrides Crow, a witness in the same case for said defendants, who being first duly sworn, depose and says as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants in this cause, but am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. At the time referred to, and at all other times, as far as my knowledge extends, lands sold under execution by sheriffs and marshals in said County of Jackson, have usually sold very low, very frequently for but a very few cents per acre.

Answer to 3d interrogatory. I was present at said sale referred to in this interrogatory, and I think there were about as many persons present at said sale as usually attend at sales of that kind in said County; I think there from 15 to 25 persons present, and perhaps more, as I paid but little attention as to the number of persons.

Answer to 4th interrogatory. I have been in the habit of attending the sitting of the Circuit Court in said County, for the last four or five years, and I think there were as many persons present at the time referred to in this interrogatory, as usually attend Courts on the first day, or attend sheriff's and marshal's sales at that place.

Answer to 5th interrogatory. I think there was as much publicity given of such sale as is usually given in such cases; I saw one notice of such sale posted upon the court-house door in Elizabeth, in said County, and I think I saw one other notice or advertisement of such sale posted up on the store-house door of Mr. Hough, in said town of Elizabeth. The Sheriff conducted said sale in the usual manner.

Answer to 6th interrogatory. I do not know as to the Sheriff going round through town proclaiming said sale, but he did proclaim the same at the court-house door.

Answer to 7th interrogatory. I did see William Byers present at said sale, and I think he was encouraging the people to bid for

said lands, and he gave it as his opinion that if they would buy the same, that they would get a good title, for it was an honest and fair sale.

Answer to 8th interrogatory. I think the Judge was expected to be in attendance on that day, to hold said term of the Court, and I think the Sheriff did advertise his sales of property under execution to take place on that day, as he usually did, to take place on the first day of the term of the Court.

Answer to 9th interrogatory. I know nothing of the matters inquired of in this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of in this interrogatory.

Answer to 11th interrogatory. I was Clerk of the Circuit Court for said County of Jackson, from September, A. D. 1846, to September, A. D. 1848, and on the 28th day of April, A. D. 1847, I, as such Clerk, issued an execution in the case of Wm. B. Duncan & Co. *v.* Noadiah Marsh, directed to the Sheriff of said County, commanding him to make the balance of the costs remaining unpaid in that suit, which execution was levied by said Sheriff upon divers other lands lying in said County, as the property of said W. B. Duncan and Co., and which was afterwards returned by said Sheriff as unsold, and the said execution unsatisfied; and the said defendants in said execution paid into my hands by an agent, the amount of the costs indorsed upon said execution while I was Clerk of said Court; it was the practice or custom of Wm. Byers and J. H. Patterson, attorneys at law, in cases where they were interested, to make out writs and executions in blank for me and send them to me to fill up and date and sign and affix the seal thereto. I know of nothing more that would be material or of any benefit to either of the parties to this suit, or to the subject of this examination.

ATRIDES CROW.

Sworn to and subscribed before me, on this the 24th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Ordered, that further proceedings be adjourned until to-morrow morning.

And afterwards, on the 25th day of August, A. D. 1849, at the same place, appeared James Fortenberry, a witness in the same cause, on the part of the said defendants, who being first duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I am acquainted with the defendants, William Byers and A. J. Dougherty; but I am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. I know that at sheriff's and marshal's sales, made under execution in said county, lands sold usually

very low, far below their value, very frequently for but a few cents per acre, and I have lived many years in this and the adjoining county, and, at the time referred to, lands sold very low under execution.

Answer to 3d interrogatory. I was present at the sale referred to in this interrogatory, and I think there were as many persons present as usually attend such sales; there was quite a number present, but how many I do not know.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court, in said county, all the time ever since the county was organized, and I think at the time referred to there were as many persons present in the town of Elizabeth, where said Courts are held, as usually attend on the first day of Court, or as usually attend sales made by sheriffs or marshals at that place.

Answer to 5th interrogatory. I think there was as much publicity given to such sale as is usual, and was conducted in the usual manner.

Answer to 6th interrogatory. I do not know as to the matter inquired of by this interrogatory.

Answer to 7th interrogatory. I did see the defendant, William Byers, present at said sale; and that he was urging and encouraging the people to purchase said lands, and giving it as his opinion that if they would purchase said lands, that they would acquire a good title to the same; that he stated to some young men who were present, that then was the time for them to buy farms, as they had an opportunity to purchase lands cheap.

Answer to 8th interrogatory. It was my understanding, and as far as I know, the expectation of the people, that the Judge of said Court would be in attendance on that day to hold said Court; and as to the other matters inquired of by said interrogatory, I know nothing.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I recollect that Wm. H. Morris was present at said sale, and had a good deal to say about it, and that he went away for some purpose, and again returned to the place of sale; but I cannot recollect particularly what was said; or for what purpose he left the sale and returned, I do not recollect.

Answer to 11th interrogatory. I do not know of anything more that would be material or of any benefit to either of the parties to this suit, or the subject of this examination.

JAMES FORTENBERRY.

Sworn to and subscribed before me, this 25th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place appeared John C. Pugh, a witness in the same cause, on the part of said defendants, who being first duly sworn deposes and says, as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants in this cause, but I am not acquainted with said Surget, the complainant.

Answer to 2d interrogatory. I have lived in this County for the last 14 years, and I know that at the time referred to, that lands sold under execution by sheriffs and marshal's invariably sold very low, of for a very small sum, and frequently for but a very few cents per acre, sometimes two or three cents, and sometimes, but a few cents per tract, and I have known some well improved farms sell for 10 or 15 dollars, and I have never known an instance of lands selling under execution for anything like its value, in this county.

Answer to 3d interrogatory. I was present at the sale at the time and place referred to in this interrogatory, and there were quite a number of persons present. I think as many were in attendance at that time as usual attend sales of this kind. At the commencement of the sale the court-house was nearly filled up, but some left before the sale concluded. I think, at least some 15 or 20 persons were in attendance, and perhaps more.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court for Jackson County for some five or six years, and I think there were as many persons in attendance, at the time referred to in this interrogatory as usually attend Circuit Courts in said County on the first day of the term, or as usually attend sales made by sheriffs and marshals under execution at that place.

Answer to 5th interrogatory. I think there was as much publicity given to such sale as is usually given to such sales made at that place.

Answer to 6th interrogatory. I recollect that the sheriff, Webb, proclaimed said sale at the court-house door, but as to whether he went out through the town for that purpose, I do not know.

Answer to 7th interrogatory. I saw William Byers, the defendant, present at said sale, and was urging the people to purchase, and giving it as his opinion, repeatedly, that if they would purchase the title would be good, that the judgment upon which said execution issued was regular, that Marsh, who was defendant in the suit, had regularly recovered judgment against Wm. B. Duncan & Co., who were the plaintiffs, for all his costs in that suit, and that execution had properly issued thereon, and that the proceedings under said execution were regular, &c.; he, Byers, further stated that he did not want the land; that all he wanted was to make the money on the execution, which was his duty as an attorney, and urged upon those present to buy the land.

Answer to 8th interrogatory. I did not know to the contrary, but that the Judge of said Circuit Court would be in attendance to

hold said Court, at that time; I was summoned as a grand juror, and attended for that purpose, and I expected there would be Court, and people generally attended as usual, and it is my belief that people generally expected that there would be Court on that day, and the sheriff of said County advertised his sales, as he usually did, to take place on that day; I, myself, saw an advertisement for the sale of said lands on the court-house door, in the town of Elizabeth, and I frequently heard the sale of said lands spoken of some time previous to the said day of sale.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. William H. Morris then resided in the town of Elizabeth, where said sale was made; was present at said sale, and while the sale was pending, I heard the said Morris declare that if certain lands of the said Francis Surget, which were adjoining Nathan Barns's land, in the neighborhood of Samuel Garner, were levied upon and to be sold, that he, the said Morris, would buy them, and the defendant, Byers, then requested the sheriff to let said Morris to examine the numbers of such lands, and on examining the numbers, the said Morris said he could not tell whether they were the lands he wanted, until he could go to his house and get a patent there; at the request of said Byers, the sheriff, Webb, suspended said sale, until said Morris could go to his house and examine his patent, and that said Morris did then go away, and in a short time he again returned to the court-house, the place of sale, and stated that the lands he wanted were not levied upon, and therefore he would not purchase; said Morris was considerably intoxicated.

Answer to 11th interrogatory. I was present at the commencement of the sale of said lands, and remained until *until* the sale was closed, and that all the time; there was quite a number of persons present, but, at the close, there was not as many present as at the commencement. I think the sale commenced between eleven and twelve of the clock, on the morning of that day, and I suppose it continued about one hour. While the sale was progressing, there was several persons who would occasionally bid against said Byers; some would bid a half cent, or a cent more, and the like. I do not know of anything more that would be of any benefit to either of the parties to this suit.

JOHN C. PUGH.

Sworn to and subscribed before me, this 25th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place also appeared Reuben U. Norwood, a witness in this case, on the part of said defendants, who, being duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants in this suit, but I have no personal acquaintance with said Francis Surget, the complainant.

Answer to 2d interrogatory. I do not know, as I was not in the habit of attending sales of that kind. I have attended some sales of land in said County of Jackson, and what I have seen sold, generally sold very low, far below their value.

Answer to 3d interrogatory. I was present at the sale referred to in this interrogatory, and there was present as many persons as I usually see at sales of that kind; I am of opinion that there were fifteen or twenty persons present, or perhaps more.

Answer to 4th interrogatory. I have frequently attended the sittings of the Circuit Court, in said County of Jackson; and at the time referred to in this interrogatory, I think there were as many persons in the Town of Elizabeth, were said Courts are held, as usually attend at that place on the first day of Court, when I was present.

Answer to 5th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 6th interrogatory. I do not know anything as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I did see William Byers, the defendant, present at said sale, and he was urging and encouraging the people to buy the said lands, and he gave it as his opinion, as a lawyer, repeatedly, that if they would purchase the land, that they would get a good title.

Answer to 8th interrogatory. It was generally expected, so far as I know, that the Judge of said Court would be in attendance on that day, to hold said Court, and I know that a great many were very much disappointed by his not coming; but as to the other matters inquired of by this interrogatory, I know nothing.

Answer to 9th interrogatory. I know nothing of the matters inquired of in this interrogatory.

Answer to 10th interrogatory. I distinctly recollect that William H. Morris, who resides in Elizabeth, in said County of Jackson, was present at said sale, and was very anxious, seemingly, to buy a certain section of land, if levied upon, and could ascertain how it lay, and exactly where situated, but do not distinctly recollect any further, as to the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I do not know of anything more that would be of any benefit to either of the parties, or to the subject of this examination.

REUBEN U. NORWOOD.

Sworn to and subscribed before me, this 25th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place also appeared James Robinson, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants in this cause, but I am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to in this interrogatory, and before, lands sold under execution, by sheriffs and marshals, in this County, usually sold very low, with the exception of one or two cases.

Answer to 3d interrogatory. I was present at the sale referred to in this interrogatory, and I think there were present, at said sale, from fifteen to twenty-five persons, and perhaps more.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Courts in this County, Jackson, for the last twelve or fifteen years, except the last two years, I have not regularly attended. I do not know whether or not there were as many persons in the said Town of Elizabeth, on that day, as is usual on the first day of Court, but think there was not quite so many as usual.

Answer to 5th interrogatory. I do not know as to the matters inquired of this interrogatory. I heard some time previous that there was to be such a sale on that day as the one referred to in this interrogatory.

Answer to 6th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I did see William Byers, the defendant, present at said sale; but as to the other matters inquired of in this interrogatory I know nothing, as I did not remain at the sale till it closed.

Answer to 8th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I have been sheriff of Jackson County at different periods, prior to the sale of the lands referred to. It was customary for attorneys at law who had control of judgments or executions to give me written instructions in regard to levying executions, and what property to levy on, and whether to sell or hold up or return the execution unsold, and the like. The complainant in this cause has also taken my deposition in this case. I know nothing further that would be of any benefit to either party in this cause, or the subject of this examination.

JAS. ROBINSON.

Sworn to and subscribed before me, this 25th of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Ordered, that further proceedings in this case be adjourned until Monday morning, the 27th instant.

And on the 27th day of August, A. D. 1849, at the same place, also appeared Isaac Gray, a witness in the same case on the part of said defendants, who, being duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I know William Byers and Andrew J. Dougherty, the defendants, but I am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. I was Sheriff of Jackson County at different periods for several years since the year 1836, and can state that at the time referred to in this interrogatory, and also before and since that period, lands, when sold under execution by sheriffs and marshals at the court-house in said county, always sold very low, frequently but for a few cents per acre.

Answer to 3d interrogatory. I know nothing of the matters inquired of by this interrogatory, as I was not present at said sale.

Answer to 4th interrogatory. I was in the habit of attending the sittings of the Circuit Court of Jackson County for eight or ten years, but know nothing of the other matters inquired of by this interrogatory, as I was not in the town of Elizabeth on that day.

Answer to 5th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 6th interrogatory. I know nothing of the matters inquired of by this interrogatory, as I was not present.

Answer to 7th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory, as I was not present at said sale.

Answer to 11th interrogatory. Since the formation of a State Government of the State of Arkansas, myself and James Robinson, John H. T. Webb, A. M. Carpenter, and Jas. J. Waddill, have acted as Sheriff of Jackson County, and none others. Asa M. Carpenter is now dead. While I was acting as Sheriff, it was the practice of William Byers and J. H. Patterson, attorneys at law, to give me written instructions how to proceed with writs and executions, levies and sales which they were controlling. The said William Byers is one of the defendants in this suit. I know of nothing more that

would be any benefit to the parties, or material to the subject of this examination.

ISAAC GRAY.

Sworn to and subscribed before me, this 27th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place also appeared Albertine Beard, a witness in the same case, on the part of said defendants, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I have no personal acquaintance with either of said parties.

Answer to 2d interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 3d interrogatory. I was not present at said sale, and know nothing of the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have not been in the habit of attending Court, and do not know as to the matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know how much publicity had been given to said sale, more than that I saw an advertisement made by Sheriff Webb, for the sale of said lands referred to, which said advertisement was posted up on a tree at the cross road, near the residence of John Beard, in Bayou Cache Township, in said County of Jackson, which was a public place in said Township, and the usual place of holding elections in said Township; I saw the said advertisement some time previous to the time of said sale.

Answer to 6th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I was not at said sale, and know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party, or material to the subject of this examination.

ALBERTINE C. BEARD.

Sworn to, and subscribed before me, this 27th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place, also appeared Townsend Foley, a witness in this cause, on the part of said defendants, who first being duly sworn deposes and says:

Answer to 1st interrogatory. I have no personal acquaintance with either of the parties in this suit.

Answer to 2d interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 3d interrogatory. I was not present at said sale, and know nothing of the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have not been in the habit of attending such Courts, and do not know as to the matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know how much publicity had been given to such sale, more than I know, that in the spring of the year 1846, I was at the town of Elizabeth, in said County, and John H. T. Webb, the Sheriff of Jackson County, gave me a large number of advertisements for the sale of the lands referred to, as well as some for the sale of other property, requesting me to set them up in the part of the County in which I resided, or to give them to others to set up, and stating to me at the same time, that it was necessary to set up at least three advertisements in each township in said County; and I accordingly took said advertisements, and that I set up three of the same which were for the sale of the lands referred to, in the Township of Bayou Cache, in which I resided; one of which I set up at the cross road, near the residence of John Beard; one at my own house, and one at the blacksmith's shop of William Sanders, which I considered to be three of the most public places in said Township of Bayou Cache, and *and* the remainder of the advertisements which were given me by said Sheriff were distributed in other parts of the country according to his directions; said Sheriff Webb particularly requested me to set up three of said advertisements in the Township of Bayou Cache, in which I resided, which I accordingly did as above stated. I have been a citizen of Bayou Cache Township, in said County of Jackson, ever since November, in the year 1845; at the time above referred to, said Township was called Bayou Cache, but it is now called Bayou Deview, the name having been recently changed, by a division of Bayou Cache Township.

Answer to 6th interrogatory. I was not present, and know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I know nothing of the matters referred to in this interrogatory.

Answer to 8th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party, or material to the subject of this examination.

his
TOWNSEND ✕ FOLEY.
mark

Sworn to, and subscribed before me, this 27th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place, also appeared John Beard, a witness in the same case, on the part of said defendants, who being duly sworn, deposes and says, as follows, to wit:

Answer to 1st interrogatory. I know William Byers and A. J. Dougherty, the defendants in this cause; but I have no personal acquaintance with said Francis Surget, the complainant.

Answer to 2d interrogatory. I know that lands, when sold under execution by sheriffs and marshals in this county, usually sold very low, and I have been present at a number of sales of that kind; and at the time referred to in this interrogatory they frequently sold for but a few cents per acre.

Answer to 3d interrogatory. I was present at the sale at the time and place referred to in this interrogatory, and I think there were as many persons present at said sale as usually attend sales of that kind; I think some 25 or 30 persons were present at that time.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County, for the last 5 or 6 years, and I think there were as many, or perhaps more persons in the town of Elizabeth, where said Courts are held, on that day, as usually attend Court at that place on the first day of Court, or attend the sales of sheriffs under execution.

Answer to 5th interrogatory. I think there was as much publicity given to said sale as is usually given to sales of that kind. I heard the sheriff, J. H. T. Webb, proclaiming at the post-office, and on the streets of said town, that such a sale as the one referred to was then about to commence, and was inviting the people to go down to the court-house and attend said sale.

Answer to 6th interrogatory. Yes, he did so, as before stated in my answer to the last interrogatory; but at whose instance he did so, I do not know.

Answer to 7th interrogatory. I did see William Byers, the defendant, present at said sale, and he did urge and encourage the people present to buy; and said Byers frequently, during the progress of the sale, gave it as his opinion, that the purchaser of said land would acquire a good title.

Answer to 8th interrogatory. I attended at said time and place

as a grand juror, and it was generally expected and believed by the citizens of the county that the Judge of said Court would be in attendance on that day to hold said Court; I had not noticed advertisements of the sheriff of sales of property myself particularly; but I heard a good deal of talk among the people about sales of property under execution, which was expected to take place on that day.

Answer to 9th interrogatory. I know of no such arrangement as the one referred to in this interrogatory.

Answer to 10th interrogatory. William H. Morris, who resides in the town of Elizabeth, was present at said sale, and had a good deal to say, but do not distinctly recollect what he said; but I recollect that he did leave the court-house for some purpose, and in a short time returned, and I think the sheriff did suspend the sale while he was gone until he returned.

Answer to 11th interrogatory. I was present at said sale all the time from the commencement to the close, and there was a goodly number of persons present all the time, and the sale appeared to be conducted fairly, and in the usual manner of conducting sales of that kind. The sale commenced about 11, or perhaps between the hours of 11 and 12 o'clock in the forenoon of that day, and I think continued about one hour, or perhaps one hour and a half. There were other persons frequently bidding for said lands besides the defendant, Byers. I think that some time previous to said day of sale, I saw an advertisement set up on a tree near my house, which I did not read myself, but others read it, and they said it was for the sale of the lands belonging to W. B. Duncan & Co., and it was a common talk in the country around about where I live, that such a sale was agoing to take place on the first day of the May term of the Circuit Court in 1846. I think that at no time during the progress of the sale was there a less number than from 10 to 15 persons present at said sale. I know of nothing more that would be of any benefit to either party, or material to the subject of this examination.

JOHN BEARD.

Sworn to and subscribed before me, this 27th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid also appeared Elias B. Roddy, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants in this cause, but have no personal acquaintance with Francis Surgett, the complainant.

Answer to the 2d interrogatory. About the time referred to in this interrogatory, and before and since, when lands were sold under execution by sheriffs and marshals in this county, they usually sold

very low; very frequently they have sold for but a few cents per acre.

Answer to 3d interrogatory. I was not present at said sale, and cannot state anything as to the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have generally attended the sittings of the Circuit Court of Jackson County for the last 13 or 14 years; but as I was not present at the time referred to, I do not know.

Answer to 5th interrogatory. I do not recollect of seeing or reading any advertisement for the sale of said lands; but for some length of time previous to the time of said sale, it was a common talk among the citizens, in the part of the county where I reside, that a large quantity of the lands of William B. Duncan & Co. were to be sold at the May term of said Circuit Court, and through mistake, as I suppose, the sheriff had included some of my land in the advertisement. I live in Taylor's Bay Township, in said county, about 25 miles from Elizabeth, the place of holding Court for said county, and in the immediate neighborhood of the said lands which were levied upon and sold at time referred to.

Answer to 6th interrogatory. As I was not present at said sale, I cannot state anything as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. It was expected and believed by the citizens in this part of the county (Taylor's Bay) that the Judge would be present to hold said Court; but as to the other matters inquired of by this interrogatory, I know nothing more than what I have stated in my answer to the 5th interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. The lands which I had understood were levied on and advertised as Duncan & Co.'s land, and which belongs to me, as above stated, is as follows: W. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of Section 17, and the E. $\frac{1}{2}$ of the E. $\frac{1}{2}$ of Section 18, in Township 8 north, of Range 3 west. I know nothing more that would be of any benefit to either party to this suit, or material to the subject of this examination.

ELIAS B. RODDY.

Sworn to and subscribed before me, this 27th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Ordered, that further proceedings herein be adjourned until tomorrow, the 28th instant.

And on the 28th day of August, A. D. 1849, at the same place, also appeared B. F. Glanton, a witness in the same case, on the part of said defendants, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants; but I am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to in this interrogatory, and before and since that time, when lands were sold under execution by sheriffs and marshals in this county, always sold very low, and frequently for but a few cents per acre.

Answer to 3d interrogatory. I was not present at said sale, and as to the matters inquired of by this interrogatory, I know nothing.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of said Court for the last 10 or 12 years; but as *as* I was not present at said time, I know nothing of the matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know how much publicity had been given to said sale, more than that I distinctly recollect I saw as many as two advertisements of the Sheriff Webb stuck up for the sale of lands; one of which was set up on the store-house door of Mr. Polite, at the Chickasaw Crossing, on White River, in Taylor's Bay Township in said *in said* County of Jackson, some time *time* before the day of sale; but as to the other advertisement, I do not recollect where it was set up; but I know I saw one other set up at some place in said county. The reason why I recollect the circumstance more particularly is, that it was said that the lands of John Roddy and Elias Roddy were included in said advertisements, and Mr. John Roddy got me to examine said advertisements, and get the numbers of the lands from said advertisements, which I did accordingly.

Answer to 6th interrogatory. As I was not present at said sale, I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. As I was not present, I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. It was generally expected by the citizens of this, Taylor's Bay Township, that there would be Court on the day referred to, and a good many persons went up to Elizabeth on that day to attend Court, and I think the sheriff advertised his sales to take place on that day, as he usually did.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory, as I was not present.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party in this suit, or material to the subject of this examination.

B. F. GLANTON.

Sworn to and subscribed before me, this 28th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place aforesaid, also appeared William Polite, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants, but am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. I do not knowas to the matters inquired of by this interrogatory, as I have never attended sales of that kind.

Answer to 3d interrogatory. I was not present at said sale, and cannot say as to the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have not been in the habit of attending said Courts, and cannot state as to the matters inquired of.

Answer to 5th interrogatory. I do not know how much publicity had been given to such sale; I am merchandising at the Chickasaw Crossing on White River, in Taylor's Bay Township, in said County of Jackson, and was at the time and before said sale, and during the spring of the year 1846; there was an advertisement for the sale of said lands made by said sheriff, posted up on my store-door, which I know was read by a great many persons, and it seemed to be pretty generally known by the citizens of this part of the County, for it was the subject of frequent conversation for some time before said day of sale.

Answer to 6th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I think it was expected by the people in Taylor's Bay Township, that Court would be in session at the time referred to; but as to the other matters inquired of by this interrogatory, I know nothing more than what I have stated in my answer to the 5th interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory, as I was not present.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party, or material to the subject of this examination.

WILLIAM POLITE.

Sworn to and subscribed before me, on this the 28th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And, at the same time and place last aforesaid, also appeared Isaac D. Mooney, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants, but I have no personal acquaintance with said Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to, and before and since, lands, when sold under execution by sheriffs and marshals, in said County of Jackson, usually sold very low, frequently for but a few cents per acre.

Answer to 3d interrogatory. I was present at said sale at the time and place referred to, and I think there were as many persons in attendance at said sale, as usually attend sales of that kind; I think there were some 25 or 30 persons present.

Answer to 4th interrogatory. I have generally attended the sittings of said Court ever since the year 1844, and I think that at the time referred to, there were as many persons present in the town of Elizabeth, where said Courts are held, as usually attend Court at that place on the first day of the term, or as usually attend sheriff's sales.

Answer to 5th interrogatory. I think there was as much publicity given to said sale, as is usually given to such sales; I heard the sheriff, J. H. T. Webb, make proclamation, and call the attention of the people, informing them that such a sale as that referred to was about to take place.

Answer to 6th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I saw William Byers, the defendant, present at said sale, and he was urging the people to purchase said land, and he, Byers, did give it as his opinion that the purchaser would get a good title to said land.

Answer to 8th interrogatory. It was generally expected that there would be court at that time, and I and many others attended under such expectation, and I think the sheriff advertised his sales to take place at that time, as he usually did.

Answer to 9th interrogatory. I know nothing of any such arrangement.

Answer to 10th interrogatory. I don't recollect anything of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. Said sale was conducted in the same manner as other sales of that kind. I know nothing further that would be of any benefit to either party, or material to the subject of this examination.

ISAAC D. MOONEY.

Sworn to and subscribed before me, this 28th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Ordered, that further proceedings herein be adjourned till to-morrow.

And now, on the 29th day of August, A. D. 1849, at the same place, also appeared John C. Saylors, a witness in the same cause, on the part of said defendants, who first being duly sworn, deposes and says:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants, but am not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution by sheriffs and marshals in this county, usually sold very low, frequently for but a few cents per acre. I have known several well-improved farms in this county sell for a few dollars, from 1 to 30 dollars for a whole tract, or for a few cents per acre, at such sales, and I have never known an instance of lands when sold under execution bringing anything like its value.

Answer to 3d interrogatory. I was not present at said sale, and do not know as to the matters inquired of.

Answer to 4th interrogatory. I was in the habit, prior to the year 1845, for several years, generally, in the habit of attending said Courts, but was not there at the time referred to, and do not know as to the other matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 6th interrogatory. As I was not there, I do not know.

Answer to 7th interrogatory. As I was not there, I do not know.

Answer to 8th interrogatory. I do not recollect as to the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I do not know anything of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I do not know, as I was not present.

Answer to 11th interrogatory. Previous to the year 1841, I was Clerk of the Circuit Court for said County of Jackson for several years; and in the year 1840, being then clerk, and residing some distance from the seat of justice, I appointed William Y. Haggard my deputy, to attend to the business of the Clerk's Office, giving him full and entire charge to conduct the business of said office, and during the time of my being such Clerk. It was a common practice of attorneys at law, and especially William Byers, the defendant, to

furnish me with blank writs and executions, or forms for the same, in all such cases as he was interested in as attorney, with such other instructions as he thought advisable, so that all such things should be in proper and legal form. I have examined the original execution under which the sale referred to was made, to wit, Wm. B. Duncan & Co. v. Noadiah Marsh, and which execution appears to have issued to collect the costs thereon; and all of the costs which are thereon indorsed are exclusively the costs of said Marsh, for which he obtained judgment against said plaintiffs in said suit, and that there are no costs accruing on the part of said plaintiffs indorsed on said execution, and that said plaintiffs have not paid to me their part of their costs due me as such Clerk, nor to any other person for me, within my knowledge. It was the practice while I was Clerk, when the Judge of the Court failed to appear, the Clerk of said Court had the Court opened and kept open until the evening of the third day of the term. Since 1840, Wm. Y. Haggard, Green Sylvie, Atrides Crow, and A. H. Logan, have respectively acted as Clerk of the Circuit Court of Jackson County. The said Wm. Y. Haggard has departed this life. The said Green Sylvie left this part of the country, and his place of residence is to me unknown. In the month of April in the year 1846, William Y. Haggard, who was then Clerk of said Court, was sick, and which circumstance I recollect, because the Probate Court of said County was held on the second Monday of that month, and said Haggard being sick, I was appointed his deputy, so that the business of the Court might proceed. Said Haggard died some time in the summer following.

I know nothing further that would be of any benefit to either party, or material to the subject of this examination.

JOHN C. SAYLORS.

Sworn to and subscribed before me, this 29th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Further proceedings herein are adjourned until to-morrow, the 30th instant.

And on the 30th day of August, A. D. 1849, at the same place, also appeared A. H. Logan, a witness in the same case on the part of said defendants, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I know William Byers and A. J. Dougherty, the defendants; but I have no personal acquaintance with said Francis Surget, the complainant.

Answer to the 2d interrogatory. Previous to 1846 I do not know how lands sold under execution, but since that time I have witnessed several sales of that kind referred to, and lands have invariably sold very low, when sold under execution by sheriffs and marshals in this

county, generally for *a* but few cents per acre; I have known a quarter section of land sold for but one dollar and for one dollar and a half.

Answer to 3d interrogatory. I was not present at the time referred to, and know nothing of the matters inquired of by this interrogatory; I was not in the State at that time.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of said Court since the year 1846; but as to the other matters inquired of by this interrogatory I know nothing, as I was not present at said term.

Answer to 5th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 6th interrogatory. As I was not present, I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. As I was not present, I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I am at present the Clerk of the Circuit Court of said County of Jackson, and have been for some time past; and that I have examined the papers and records in the case of Wm. B. Duncan & Co. against Noadiah Marsh in said Court, in which case the execution under which said lands were sold; and I find that from said records and papers that divers costs accrued in said cause, at the instance of the said plaintiffs, but on examination of the said original execution now in my office, there is no indorsement of any of said costs accruing on the part of said plaintiffs in said cause indorsed upon said execution; and it appears that only the costs which accrued at the instance and on the part of the said defendant, Noadiah Marsh, were indorsed upon said execution, and none other, and there is no evidence in my office that any part of the costs which accrued at the instance and on the part of said plaintiffs has ever been paid; and, as far as I know, the same still remains unpaid.

It has been the custom since I have been Clerk of said Court for attorneys at law, in such cases as they were instructed as attorneys, and particularly with William Byers, the defendant in this cause, to furnish blank writs and executions ready prepared for the signature of the clerk and the seal of the Court, and such other instructions as were deemed material, so that the proceedings might be in proper and legal form.

I know nothing further that would be of any benefit to either party in this cause, or material to the subject of this examination.

A. H. LOGAN.

Sworn to and subscribed before me, on this the 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place last aforesaid, also appeared Noadiah Marsh, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says as follows, to wit:

Answer to 2d interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants, but am not acquainted with the said Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands when sold under execution by sheriffs and marshals in Jackson County have always sold very low, frequently but for a few cents per acre.

Answer to 3d interrogatory. I was not present at said sale; and as to the matters inquired of by this interrogatory I know nothing.

Answer to 4th interrogatory. I have resided for several years in the town of Elizabeth, where said Courts are held, and was living there at the time referred to, and was in town on that day, and I think there were as many persons present in the town of Elizabeth on the day referred to as usually attend Court on the first day of the term of said Court.

Answer to 5th interrogatory. I think there was as much publicity given to such sale as is usually given to such sales; there was an advertisement for the sale of said lands on my store-house door, and one on the court-house door in the town of Elizabeth, and I frequently read the one on my store door with a view of making a purchase of some of said lands, but before the day of sale arrived I declined making a purchase; and it seemed to be pretty generally known and understood by the citizens for some time before the day of sale, that such a sale as the one referred was a going to take place, and it was the subject of frequent and every-day conversation among the citizens; the advertisements above-named were made by the sheriff of said County, J. H. T. Webb, and were put up some time previous to said day of sale; I do not recollect what length of time previous that the same were put up, but it was a considerable time.

Answer to 6th interrogatory. I think that the sheriff, Webb, or some other person, did make proclamation at my store-house door on that day, notifying the people that such a sale as the one referred to was then about to take place; there was at the time a considerable crowd of persons about my store door, and they all went down to the court-house, which was situated some three hundred yards from my store, and the furthest store from the court-house in said town; I recollect distinctly that said proclamation was made, but whether it

was sheriff, Webb, or some other person, I do not recollect distinctly; I was closely engaged at the time attending to some business, which prevented me from going to the court-house to attend said sale; I do not know at whose instance said proclamation was made.

Answer to 7th interrogatory. Not being present at the sale, I do not know as to the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I think it was generally expected and believed by the citizens that Court would be in session on that day, and I think the sheriff advertised his sales to take place on that day as he usually did; I recollect of seeing some of the advertisements up.

Answer to 9th interrogatory. I know of no such arrangement as the one referred to.

Answer to 10th interrogatory. As I was not present at said time, I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I was the defendant in the original suit in which the execution under which the lands above referred to were sold, and obtained judgment against said plaintiffs for all of my costs; William Byers, one of the defendants in this cause, and J. H. Patterson, were my attorneys in the case, and they had the sole management and direction of the case, and everything connected therewith, and they were my attorneys generally, and I directed them to close up all of my business, and I expected them to do it. The subject-matter about which the above-named suit was instituted, was the legitimate business of the said firm of William B. Duncan & Co., of which firm said Francis Surget, the complainant, was a member; I have no particular recollection of specially instructing my said attorneys to have an execution issued for the costs in the above-named suit, but as they had the general management and direction of my business as above stated, I expected them to do so if necessary, for I wanted all my business closed up, and I expected them to do it, and so informed them, and urged it upon them; during my absence from home, some fee bills were issued against me for costs which accrued in the above-named suit, as I was informed, which were paid by W. H. Morris, who presented me, on my return, with the accounts for the same, and I paid the amounts of said fee bills to said Morris, which amounts he had advanced for me to the persons claiming said fees; I do not recollect who said fees were in favor of, nor the amount of the same, and prior to said sale of lands, the said Wm. B. Duncan & Co., nor any person for them, ever paid the said costs, nor any part thereof, for which I recovered judgment against them. I do not know of anything further that would be of any benefit to either party in this suit, or material to the subject of this examination.

NOADIAH MARSH.

Sworn to and subscribed before me, on this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place last aforesaid, also appeared Josephus Blagg, a witness in the same cause, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I know William Byers and A. J. Dougherty, the defendants; but I have no personal acquaintance with said Francis Surget, the complainant in this cause.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution by sheriffs and marshals in this county, have always sold very low, mostly for but a few cents an acre.

Answer to 3d interrogatory. I was in the town of Elizabeth on that day; but I do not recollect whether I was at the sale or not; there was a good many people in town on that day; but do not know whether there was as many or more than usually attend Court. I never had any business in Court, and never pay much attention as to the number in attendance.

Answer to 4th interrogatory. I have frequently attended the sittings of said Court for the last 5 or 6 years; but I cannot say whether there was as many persons in said town, on that day, as usual, or not; and do not know as to the other matters inquired of by this interrogatory further than in my answer to 3d interrogatory.

Answer to 5th interrogatory. I do not know how much publicity had been given to such sale.

Answer to 6th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I saw William Byers present at some sale of the Surget lands; but whether it was at the sale above referred to or not, I cannot distinctly recollect; and as to the other matters inquired of by this interrogatory, I know nothing.

Answer to 8th interrogatory. I think it was generally expected by the citizens that the Court would be in session on that day; but as to the other matters inquired of, I do not recollect.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing that would be any benefit to the parties, or material to the subject of this examination.

JOSEPHUS BLAGG.

Sworn to and subscribed before me, this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place last aforesaid, also appeared George W. Runnels, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I am acquainted with all the parties to this suit.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution by sheriffs and marshals in this county, always sold very low, for a mere trifle, often for a very few cents per acre.

Answer to 3d interrogatory. I was present at said sale at the time and place referred to, and there was as many persons in attendance as usually attend sales of that kind; I should suppose there were about 30 persons present at said sale.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County for the last 10 or 12 years, and there were as many persons in the town of Elizabeth on that day as usually attend Court on the first day of the term, or as many as usually attend sheriffs and marshals sales in this county.

Answer to 5th interrogatory. I live in the upper part of this County Jackson, and I don't recollect particularly of seeing or reading any advertisement for such sale; but I heard and knew some time before said day of sale, that such a sale as the one referred to was agoing to take place at that time and place, and it was known by others in the same neighborhood where I live, as it was the subject of frequent conversation some time previous to said day of sale.

Answer to 6th interrogatory. I do not recollect as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I saw William Byers, the defendant, present at said sale; but as to the other matters inquired of by this interrogatory, I do not distinctly recollect.

Answer to 8th interrogatory. It was expected by every one, as far as I know, that the Judge would be in attendance on that day to hold said Court; myself and a great many others went with that expectation; but whether the sheriff advertised his sales for that time as usual, I do not recollect distinctly.

Answer to 9th interrogatory. I do not know of any such arrangement, nor of the other matters inquired of by this interrogatory.

Answer to 10th interrogatory. I recollect distinctly that William H. Morris was present at said sale, and had a good deal to say, but what he said I do not distinctly recollect, nor do I recollect as to the other matters inquired of by this interrogatory.

Answer to 11th interrogatory. I live some twelve or fifteen miles from Elizabeth, the place of holding Courts for said County of Jackson, in Byrd Township, and, within the last three years, the population of the County has considerably changed, by deaths and removals, and should suppose that one-third of the citizens who re-

sided in Jackson County, in the spring of the year 1846, have either died or removed, and others have come in. Said sale of lands, above referred to, seemed to be conducted in the usual manner of conducting sales of that kind; everything was fair, and open, and regular, as I thought. I know of nothing more that would be of any benefit to either party, or material to the subject of this examination.

GEORGE W. RUNNELS.

Sworn to and subscribed before me, this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place last aforesaid, also appeared John Toney, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I am acquainted with William Byers and A. J. Dougherty, the defendants, but I have no personal acquaintance with Francis Surget, the complainant.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution by sheriffs and marshals, in this County, for cash, has generally sold very low, often for but a few cents per acre; and I have never known an instance of lands sold under execution, in this County, for anything like its value.

Answer to 3d interrogatory. I was at the court-house on the day referred to, but do not distinctly recollect of being present while the sale was in progress. I think there were as many persons in town, and about the court-house, on that day, as usually attend Court on the first day of the term, or as usually attend sales at that place, made by sheriffs and marshals.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of said Court for the last nine years, and I believe there were as many persons in the Town of Elizabeth, on that day, as is usual on the first day of the term, or as usually attend sheriffs' and marshals' sales.

Answer to 5th interrogatory. I do not know how much publicity had been given to such sale.

Answer to 6th interrogatory. I do not recollect, as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I do not know, as to the matters inquired of by this interrogatory.

Answer to 8th interrogatory. It was generally expected and believed, by the citizens, as far as I know, that the Judge of said Court would be in attendance, on that day, to hold said Court; but as to the other matters inquired of by this interrogatory, I know nothing.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party, or material to the subject of this examination.

JOHN TONEY.

Sworn to and subscribed before me, this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And at the same time and place also appeared Philip Sutherland, a witness in the same cause, on the part of said defendants, who, being duly sworn, deposes and says as follows:

Answer to 1st interrogatory. I know William Byers and A. J. Dougherty, the defendants, but have no personal acquaintance with said Francis Surget.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution, by sheriffs and marshals, in this County, always sold very low, frequently for one cent an acre. I have known whole tracts sell from one to five dollars per tract.

Answer to 3d interrogatory. I was present at said sale, and I think there were as many persons present at said sale as usually attend sales of that kind; I think there were fifty persons in attendance at said sale.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County, for the last eight or nine years; and I think there were as many people in the Town of Elizabeth, on that day, as usually attend the sittings of said Court on the first day of the term, or as attend the sales of sheriffs and marshals.

Answer to 5th interrogatory. I think there was as much publicity given to said sale as is usual in such cases. I heard the Sheriff proclaiming said sale for some time, notifying the people that he was going to sell the lands referred to.

Answer to 6th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I did see William Byers, the defendant, present at said sale, and he was urging the people to buy said lands, and he, Byers, gave it as his opinion, that the purchaser would get a good title; he further told them, that, if they would buy said lands, that he, Byers, would defend their right, and done all he could to induce the people to buy.

Answer to 8th interrogatory. It was generally expected and be-

lieved, as far as I know, that the Judge of said Court would be in attendance to hold said Court on that day, but as to the other matters inquired of I know nothing.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing more that would be of any benefit to either party, in this suit, or material to the subject of this examination.

his
PHILIP ⋈ SUTHERLAND.
mark

Sworn to and subscribed, before me, this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And, at the same time and place last aforesaid, also appeared William W. Funstall, a witness in the same cause, on the part of said defendants, who, being first duly sworn, deposes and says, as follows, to wit:

Answer to 1st interrogatory. I know William Byers and A. J. Dougherty, the defendants; I have seen said Francis Surget, but have no acquaintance with him.

Answer to 2d interrogatory. About the time referred to and before and since that time, lands, when sold under execution by sheriffs and marshals, have always sold very low; I have known some sold for one cent per acre, in this county; I myself bought a tract in this county at such a sale, containing between 6 and 700 hundred acres, having thereon some well-improved farms, for about one hundred dollars; also another tract, in this county, at marshal's sale, at the court-house, containing between eight and ten thousand acres, having improvements thereon for about nineteen dollars and seventy-five cents; also, one other tract, in Independence County, containing between seven and eight thousand acres, and having thereon several well-improved farms, for three hundred and fifty-five dollars; and I have seen several other sheriff's and marshal's sales, where large tracts, having well-improved farms thereon, sell for from twenty-five cents to fifteen dollars per tract, in this, Jackson County; and I do not recollect of one single instance, in this, Jackson County, of lands selling under execution for one-tenth part of their value at private sale.

Answer to 3d interrogatory. I was not present at the sale referred to, and do not know as to the matters inquired of by this interrogatory; I was not in Jackson County, at that time.

Answer to 4th interrogatory. I have been in the habit of attend-

ing the sittings of the Circuit Court of Jackson County for the last 8 or 9 years; but as I was not present at the time referred to, I know nothing of the matters inquired of by this interrogatory.

Answer to 5th interrogatory. As to the publicity which was given to such sale, I saw an advertisement for the sale of said lands referred to, made by the sheriff of Jackson County, J. H. T. Webb, stuck up on my store-house door, in the town of Jacksonport, in said County of Jackson, which was set up some length of time previous to said day of sale, and I heard a good many speak of the sale of said lands, which was expected to take place at the subsequent term of the Circuit Court, being the May Term of 1846; my store-house above referred to, was situated in Village Township, in said county.

Answer to 6th interrogatory. As I was not present, I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I left the County a few days before the time of the sitting of said Court; but I know that when I left the County, it was generally expected by the citizens, as far as I know, that the Judge of said Court would be in attendance to hold said Court, and many were making preparation for Court under the expectation and belief that there would be Court at the time referred to in this interrogatory. I think the sheriff did advertise some sales of property to take place at that time; there was one case particularly, wherein the said sheriff had levied upon a negro, which I know was advertised, for I was interested in the case, and was entitled William W. Tunstall against John R. Frost, and judgment and execution in my favor, and said negro was levied upon to satisfy said execution, and I think I saw other advertisements made by the sheriff for the sale of property at that time.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. Some of the lands referred to in my answer to the 2d interrogatory as having been purchased by me, are as good lands, and as eligibly situated, as any lands I know in the County, and calculated to sell for as much as any lands in the County. Since the spring of the year 1846, the population of said County of Jackson has considerably changed by deaths, removals, &c., and I think that near one-fourth of the number of those who were citizens at that time, have died or removed, and others have come in. I do not know of anything further that would be of any benefit to either party in this suit, or material to the subject of this examination.

W. W. TUNSTALL.

Sworn to and subscribed before me, this 30th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And thereupon further proceedings herein are adjourned until the 10th day of September, A. D. 1849.

And on the 10th day of September, A. D. 1849, at the town of Batesville, in the County of Independence, in the State of Arkansas, appeared Rufus Stone, a witness in the same cause on the part of of said defendants, who, being duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I am acquainted with all the parties to this suit.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution by sheriffs and marshals in Jackson County, have always sold very low, frequently for but a few cents per acre. I have known well-improved lands sell for but a few dollars per tract, in many cases below the twentieth part of their value. I do not recollect of a single instance of lands selling under executions for more than the twentieth part of their value. I have been in the habit of attending such sales in that County ever since the year A. D. 1837.

Answer to 3d interrogatory. I do not remember whether I was present or not at said sale, but think I was not; and as to the other matters inquired of by this interrogatory, I know nothing.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of said Court for the last ten or eleven years, but as I think I was not present at the time referred to, I cannot say as to the other matters inquired of by this interrogatory.

Answer to 5th interrogatory. I do not know how much publicity had been given to said sale, but I very well recollect of hearing, some time before said sale took place, that a sale of that kind was to be made at that time.

Answer to 6th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I know nothing further that would be of any benefit to either of the parties to this suit, or material to the subject of this examination.

RUFUS STONE.

Sworn to and subscribed before me, on this the 10th day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

Further proceedings are adjourned until the 13th day of September, A. D. 1849.

And on the 13th day of September, A. D. 1849, at the town of Batesville, in the County of Independence, State of Arkansas, also came and appeared Thomas T. Tunstall, a witness in the same cause on the part of said defendants, who, being duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I am acquainted with all of the parties to this suit.

Answer to 2d interrogatory. About the time referred to, and before and since that time, lands, when sold under execution in Jackson County by sheriffs and marshals, have always sold at a very low rate, frequently for but a few cents per tract. I have known many large tracts sold for but a few dollars per tract, and I never have known an instance of land selling at such sales for anything like its value.

Answer to 3d interrogatory. I was not present at said sale, and do not know as to the matters inquired of by this interrogatory.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County for the last ten years, but as I was not present at said time and place, I do not know as to the other matters inquired of by this interrogatory.

Answer to 5th interrogatory. The sale of said lands was a subject of daily conversation for some length of time previous to the day of sale; and it seemed to be very generally known among the citizens that said lands were advertised to be sold at the time and place above referred to. I saw at least one advertisement myself, if not more. I saw one set up on the store-house door, in Jacksonport, in said County of Jackson, some time before said day of sale; at that time I was living in the vicinity of some of the said lands, which were advertised for sale at said time; and it seemed to be a matter of general notoriety among the citizens of the said County of Jackson that such a sale as the one referred to was to take place at the time and place referred to.

Answer to 6th interrogatory. As I was not present, I do not know as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. As I was not present, I know nothing of the matters inquired of by this interrogatory.

Answer to 8th interrogatory. I left the county some days previous to said day, and do not recollect; but I think when I left home it was expected by the citizens that the Judge of said Court would be in attendance to hold said Court, and I think the sheriff did advertise his sales to take place at that time as usual. I saw some of the advertisements myself.

Answer to 9th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 10th interrogatory. I know nothing of the matters inquired of by this interrogatory.

Answer to 11th interrogatory. I do not know, unless it be that before the sale took place I was inquired of by persons as to my opinion in regard to the title to said lands so levied upon and advertised, whether the purchaser would get a good title to said lands, and I gave it as my opinion that a sheriff's deed would be good in that case. I know of nothing more that would be of any benefit to either of the parties to this suit, or material to the subject of this examination.

THOMAS T. TUNSTALL.

Sworn to and subscribed before me, this 13th day of September, 1849.

D. W. LOWE,
Commissioner.

And at the same time and place last above-named also appeared William C. Bevens, in a witness in the same cause, on the part of said defendants, who, being duly sworn, deposes and says as follows, to wit:

Answer to 1st interrogatory. I do not know the said Francis Surget. I have seen said Andrew J. Dougherty, but have no personal acquaintance with; but I am acquainted with said William Byers, one of said defendants.

Answer to 2d interrogatory. I have been attending the Circuit Court of Jackson County, as an attorney, ever since the spring term of the year 1845, and recollect of several sales of land under execution in that county, and, so far as my knowledge extends, lands, when sold under execution in that county, have always sold at a very low rate. I do not recollect of a single instance of lands selling at such sales in that county for anything like their value.

Answer to 3d interrogatory. I was present at said sale a part of the time, and I think there were not as many persons present at said sale as usually attend such sales. I was present but a short time, and did not pay much attention to the number present, or to the sale.

Answer to 4th interrogatory. I have been in the habit of attending the sittings of the Circuit Court of Jackson County, ever since the spring of the year 1845, and I think there were not as many persons in the town of Elizabeth on that day as usual on the first day of Court; on some such occasions I have seen but a small collection of people, perhaps as few as on that day, and at other times I have seen more in attendance.

Answer to 5th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 6th interrogatory. I have no distinct recollection as to the matters inquired of by this interrogatory.

Answer to 7th interrogatory. I saw William Byers, the defendant, at said sale, and there was something said among the company about the lands selling, but do not recollect what was said.

Answer to 8th interrogatory. I do not know as to the matters inquired of by this interrogatory.

Answer to 9th interrogatory. My recollection about that matter is, that on the morning of the day on which the sale took place, it being Monday of the May term of the Circuit Court, 1846, as would have been if a Court had been held, I was interested in resisting the sale of a negro woman, levied on as the property of Frost, to satisfy an execution in favor of Tunstall, which was claimed by Frost's son, and there having been no Judge on the Circuit for some time could not be enjoined; Mr. Byers and myself had some conversation on this subject, and I think Mr. John H. Webb, then Sheriff of Jackson County, came up to us, and we all, that is, Mr. Byers, Mr. Webb, and myself, moved round to the side of the house at the instance of Mr. Webb, I think, who sought to know of us what should be his course in proceeding under the executions in his hands, there being then no Court in session; both Mr. Byers and myself having first agreed between ourselves that the negro woman should not be sold on that day, and in fact was then in a train of compromise, and was compromised, advised Mr. Webb that we were not aware that any decision had been made, as the validity or invalidity of sales made when the Circuit Court was not in session; but that it was obligatory upon him to be governed by the plaintiffs in the execution, or their attorney controlling the execution, and make sales if they ordered it. I know of no other arrangement, but that each one was to control his own execution as he pleased, in reference that point.

Answer to 10th interrogatory. I know nothing about the matters inquired of in that interrogatory.

Answer to 11th and last interrogatory. I will state, in answer to this interrogatory, that owing to the unskilfulness and general incompetency of the Clerks of the Circuit Courts in the outer Counties, on this circuit, in which Jackson County is included, it has been the habit and custom of the attorneys, on this circuit, to prepare, themselves, in almost all cases of any importance, their own writs, process, and papers. When I first came on to the circuit, I acted differently, and was not aware of the policy pursued by the bar, but afterwards learned, by experience, and it is now an inflexible rule with me; which papers and process it is usual with us to accompany with specific instruction to either the Clerk or Sheriff, as the case may be. I know of nothing more that is material to either party to this suit, that I am aware of.

W. C. BEVENS.

Sworn to and subscribed before me, this 13th day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

And I, David W. Lowe, Commissioner as aforesaid, do further certify, that at the times and places specified in the caption of the foregoing depositions, to wit, of John F. Safford, J. G. Witherspoon, James J. Waddill, George Eder, and James M. Tunstall, on the 23d day of August, A. D. 1849, in the County of Jackson, State of Arkansas, and William H. Morris, Atrides Crow, on the 24th day of August, 1849, at the same place; and James Fortenberry, John C. Pugh, Reuben U. Norwood, and James Robinson, on the 25th day of August, 1849, at the same County; and Isaac Gray, Albertine Beard, Townsend Foley, John Beard, and Elias B. Roddy, on 27th day of August, 1849, at the same County; and Ben. F. Glanton, William Polite, Isaac D. Mooney, on the 28th day of August, 1849, at the same County; and John C. Saylors, on the 29th day of August, 1849, at the same County; and A. H. Logan, Noadiah Marsh, Josephus Blagg, George W. Runnells, John Toney, Philip Sutherland, William W. Tunstall, on the 30th day of August, 1849, at the same County; and Rufus Stone, on the 10th day of September, A. D. 1849, at the Town of Batesville, County of Independence, in said State; and Thomas T. Tunstall and William C. Bevens, on the 13th day of September, A. D. 1849, at the same place last abovenamed, the said depositions of each and every of said witnesses were all reduced to writing by me, except the answers of William C. Bevens, to the 9th, 10th, and 11th interrogatories, which were reduced to writing by himself, in my presence; each and every one of said witnesses having been, by me, at the times and places abovenamed, first duly sworn, examined, and cautioned, to testify the whole truth in regard to the matters in controversy between the parties. I further certify, that each and every one of the annexed interrogatories were read to each and every witness, and to each one separately put and separately answered, by each of said witnesses. And I do further certify, that I am not of counsel or attorney to either of the parties to said cause, or in anywise interested in the event of said cause. And I further certify, that it not being convenient for me to deliver said depositions with my own hand, into said Circuit Court, I seal up the same, directed to the said Circuit Court for said District, at Little Rock; and I deposit this package in the post-office at Batesville, on this 21st day of September, A. D. 1849.

Given under my hand, this 28th day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

Fees of Commissioner,	$30 00
" Witnesses,	30 00
	$60 00

Received payment by William Byers, Esq.

D. W. LOWE,
Commissioner.

Filed 22d April, 1853.

WM. FIELD,
Clerk.

United States of America, District of Arkansas.

In the Circuit Court of the United States, for the District of Arkansas, at the April Term, 1848, on the 9th day of May, 1848, on the Chancery side thereof.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and ANDREW J. DOUGHERTY, Defts. } On Bill.

At this day came the parties by their solicitors, and thereupon on motion of the complainant, it is ordered that each party have leave, and leave is hereby granted them until the first day of January next, to take the depositions of witnesses generally, before any Judge or Justice of the Peace of any of the United States, to be read on the final hearing of this cause.

And thereupon on motion, it is further ordered, that this case be, and the same is hereby set for final hearing at the next term of this Court upon bill, answer, replications, exhibits, and testimony, to be taken in this behalf, until which time this cause is hereby continued.

A true copy from the record.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

In the Circuit Court of the United States, in and for the State and District of Arkansas.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and ANDREW J. DOUGHERTY, Defts. } In Chancery.

To the Honorable Benjamin Johnson, United States District Judge, in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court, in and for the State and District aforesaid.

Your petitioner, Francis Surget, the complainant in the above entitled suit, respectfully represents and shows to your Honor, that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause; and to establish the matters at issue in said cause, it is material to him to take the testimony of witnesses, to be read on the trial of said cause at Batesville, in the County of Independence; also in Jackson and Phillips Coun-

ties in the State of Arkansas, and in Smith County in the State of Texas; for which purpose he desires the appointment of such commissioners as shall be necessary and proper; and respectfully suggests to your Honor, that David W. Lowe, is a competent and suitable person to take such testimony in the Counties of Independence and Jackson: Albert G. Underwood, in the County of Phillips, and in the State of Texas, the Clerk of the Circuit Court, in and for Smith County, in the State of Texas, and he will every pray, &c.

FRANCIS SURGET,
Complainant.

By RINGO & TRAPNALL,
His Solicitors.

State and District of Arkansas, *sct.*

On hearing the above petition and the application thereupon, made by said complainant, for the appointment of commissioners, to take the testimony of witness, to be read as evidence on the trial of the case in said petition mentioned: Ordered, that David W. Lowe be and he is hereby appointed Commissioner, to take such testimony in the Counties of Independence and Jackson, in the State of Arkansas, and that Albert G. Underwood be and he is hereby appointed Commissioner, to take such testimony in the County of Phillips, in said State, and that the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas, be and he is hereby appointed Commissioner, to take the testimony of any witness or witnesses in the State of Texas; and the Clerk of the United States Circuit Court, in and for the State and District aforesaid, will issue a commission to said persons respectively. Done in the Vacation of said Court, in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge for the District of Arkansas.

A true copy from the record.

Attest, WM. FIELD,
Clerk.

By JNO. T. TRIGG,
Deputy Clerk.

The United States of America, District of Arkansas.

The President of the United States of America to David W. Lowe, Commissioner, &c., greeting: You are hereby commanded to cause to come before you all witnesses whatever, and them diligently examine, on the annexed interrogatories, as well on the part of the complainant, as of the said defendants, in a certain suit now pending in our said Circuit Court, on the chancery side thereof, in which Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, and that you then and there examine them apart, upon their respective corporeal oaths, first taken before you, upon the Holy Evangelists, and that you reduce their examination to writing;

and when you shall have so taken them, that you send the same, with this dedimus closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit Court to be hereunto affixed, this 15th day of December, A. D. 1848, and of American Independence the 73d year.

[L. S.]

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

The execution of this appears by the schedule hereto annexed.

D. W. LOWE, Commissioner.

United States of America, District of Arkansas.

In the United States Circuit Court, on the Chancery side thereof.

Interrogatories to be propounded to witnesses in the case of Francis Surget, complainant, and William Byers and Andrew J. Dougherty, defendants, now pending in said Court.

Interrogatory 1st, to John H. T. Webb, a witness for said complainant. Do you know the complainant and defendants in the above suit? How long have you known them, or either of them?

Interrogatory 2d, by complainant. Were you or not acting as Sheriff of Jackson County, in the State of Arkansas, in the winter and spring of 1846; if yea, were you personally present and officially acting at the time a levy and sale was made by the sheriff of said county, yourself, or some other person, of the following lands, levied on and sold as the property of Francis Surget, William B. Duncan, Stephen Duncan, and John Ker, as the property of some or one of them, viz.: fractional Sec. 18, E. ½ of Sec. 2; S. W. ¼ Sec. 4; N. W. ¼, S. ½ and W. ½ of the N. E. ¼ of Sec. 5; Sec. 8; S. E. ¼, N. W. ¼, and W. ½ of N. E. ¼ Sec. 9; S. ½ Sec. 10; N. ½ and S. W. ¼ Sec. 15, Sec. 17, Sec. 22, Sec. 18, Sec. 19, Sec. 29, and Sec. 30: all in Township 8 north, of Range three (3) west; also Sec. 8, Sec. 20, Sec. 34, Sec. 30, and Sec. 36; all in Township seven (7) north, of Range three (3) west; also Sec. 4, Sec. 7, and Sec. 9, in Township No. twelve north, of Range No. 2 west; and also Sec. No. 10 and Sec. No. 15, in Township No. 12 north, of Range No. 3 west; also the S. W. ¼ of Sec. 9, S. W. ¼ of Sec. 15, in Township No. 8 north, of Range No. 3 west, containing in all about 14,258$\frac{60}{100}$ acres of land, according to the public surveys of the United States; if yea, state all the facts and circumstances attending such levy and sale, and to whom said lands were struck off?

Interrogatory 3d, by complainant. State if you recollect at whose suit and under what process the above lands were levied and sold;

what was the aggregate amount of the judgment, as indorsed on the process under which the sale of said lands were made?

Interrogatory 4th, by complainant. How was it that so much property was levied and sold to satisfy a debt of some thirty-five or forty dollars?

Interrogatory 5th, by complainant. Was or was not the execution under which the lands mentioned in the 2d interrogatory by complainant were sold, levied on all of said lands at your own option or choice; if not, at whose instance and by or under whose direction or order was the levy on so much property made?

Interrogatory 6th, by complainant. From whom did you receive the execution and list of lands on which you made the levy spoken of in the 2d interrogatory of the complainant?

Interrogatory 7th, by complainant. State whether or not, Haggard, the Clerk at the time the execution under which you sold the lands spoken of in the 2d interrogatory was issued, is still living; if not, when did he die?

Interrogatory 8th, by complainant. State if you can, what Mr. Haggard, from whom you received the execution and the list of lands, said at the time he handed you the execution and advertisements, relative to the lands and levy, and also what instructions he gave you from the defendant, Byers?

Interrogatory 9th, by complainant. If you know, please state in whose handwriting the list of lands or advertisements handed you by Mr. Haggard was in? and also in whose handwrite the execution was drawn in?

Interrogatory 10th, by complainant. State as near as you can recollect, all that Mr. Byers said at the conversations you held with him on the day you sold said lands mentioned in interrogatory 2d? also under whose order you acted in making said sale? Would have any sale been made on that day under said execution and levy, without such directions from some persons claiming the control of said execution?

Interrogatory 11th, by complainant. Was or was not the Circuit Court of Jackson County and State of Arkansas in session on the day and at the time you sold said lands mentioned in the 2d interrogatory? If not, was it, or not, generally known or believed that the Judge of said Circuit Court was absent from home, and would not be back to hold the Court during the Spring Terms of 1846?

Interrogatory 12th, by complainant. Was it, or not, the usual custom to suspend or postpone all sales of real estate under execution in your County, when the Circuit Court was not in session? If yea? did you, or not, suspend selling under all other executions in your hands, on the day you sold the lands mentioned in the 2d interrogatory above? If yea, by whose consent or orders?

Interrogatory 13th, by complainant. Without positive instructions so to do from some person you supposed clothed with authority, wou.d

you, or not, have levied on as much land as 14,258 60-100 acres to satisfy an execution of some $35 or $40?

Interrogatory 14th, by complainant. Are you, or not, well acquainted with all or nearly all of the lands lying in Jackson County, owned by the complainant at present, as well as at the time you levied the execution above spoken of on the 14,258 60-100 acres; if yea, what was the value of the entire 14,258 60-100 acres sold by you as above stated, to the defendants, Byers and Dougherty, at the time of said sale? and out of the lands so sold, and also of the other lands belonging to said complainants in Jackson County, is there or not many tracts of 40 or 80 acres of land worth as much, or more, than the amount due on the execution under which you made said levy and sale?

Interrogatory 15th, by complainant. Was it, or not, the general belief of the citizens of your County, as expressed and well understood, as well as your own opinion, that a sale of real estate, at a time when no Court was sitting, was unauthorized, void, and of no effect? If yea, were you, or not, asked by sundry persons, at the time of the sale of the above lands, what you thought about the validity of the sale; if yea, what did you tell them?

Interrogatory 16th, by complainant. Was, or was not, the form of notice or advertisement of the sale of the lands levied on by you as above spoken of, drawn up by yourself, or furnished you, and if furnished you, by whom, and in whose handwriting was it?

Interrogatory 17th, by complainant. How many Townships were there in Jackson County, in 1846, legally established by the County Court?

Interrogatory 18th, by complainant. Did you, or not, post up in three of the most public places in each Township, in Jackson County, a notice or advertisement containing a list of the lands so levied on as above stated, together with the time and place of sale, and as whose property the same was taken in execution, twenty days before the day of sale?

Interrogatory 19th, by complainant. If you had not been instructed to make a levy on all the lands so sold by you to the defendants, Byers and Dougherty, by virtue of the execution as above stated by you, how much land would you have levied on to satisfy said execution?

Interrogatory 20th, by complainant. On the day you sold said lands, please state, whether or not, at the request of William Byers, you went round town and proclaimed, that you were then going to sell, or offer for sale, Surget's lands, or the like; and whether, on that day, you would have sold said lands, when no Court was sitting, but for the positive orders of the defendant, Byers, who assumed to act as attorney for the defendant, in the execution, under which said sale was made, to make the sale?

Interrogatory 21st, by complainant. Do you, or not, know any

other fact or circumstance that will be of any benefit to either party in this cause? if yea, please state them.

Interrogatories to be propounded to William C. Bevens, a witness in the above cause.

Interrogatory 1st, by complainant. Are you, or not, acquainted with the parties to this suit, or either of them? and how long have you known them?

Interrogatory 2d, by complainant. Do you, or not, know of a sale of a very large body or quantity of lands as the property of said complainant, or of him and others, in Jackson County, Arkansas, which were sold by the late sheriff, John H. T. Webb, of said Jackson County, at the Spring Term of said Jackson County Circuit Court, for the year A. D. 1846? If yea, please state at whose suit they were sold, under whose orders, and at whose instance, were said lands levied and sold; if you know, also state, who became the purchasers at said sale.

Interrogatory 3d, by complainant. You will please state all the circumstances and facts that you know, touching or concerning the sale spoken of in the last preceding interrogatory; all the conversations, if any, that you had relative to said sale with the said sheriff and the defendant, William Byers, or either of them, on the day of sale, or at any time previous thereto.

Interrogatory 4th, by complainant. You will please state, as near as possible, what the defendant, Byers, said, on the day of sale, relative to the sales under executions on that day; his manner at the time you talked about said sales, and the impression his language and manner conveyed to your mind on the occasion?

Interrogatory 5th, by complainant. Were you, or not, present at the time of such sale? If yea, please state when it was held? How many persons, as near as you can, and who were present at the sale? What sort of weather was it during the day of sale?

Interrogatory 6th, by complainant. Are you a practising attorney in the State of Arkansas? and if yea, are you in the habit of attending the Circuit Court of Jackson County? If yea, please state whether or not, it was not anterior to the passage of the Act of General Assembly of the State of Arkansas, approved on the 21st day of Dec. A. D. 1846, regulating the sale of real estate under execution, the common usage or practice for the sheriffs of the different counties to suspend or postpone all the sales of real estate, unless the Circuit Court should at the time of sale be open? If yea, what was the course pursued by the Sheriff of Jackson County on the day of the sale of the lands belonging to the complainant, in regard to all other sales advertised for that day by him?

Interrogatory 7th, by complainant. Was it not the general belief of both the members of the legal profession, and the citizens of the community generally, that a sale of real estate under execution was

unauthorized and void, unless the Circuit Court was in session at the time of the sale? If yea, please state whether or not the Circuit Court of Jackson County was open at the time of the sale of the said complainant's lands as spoken of above.

Interrogatory 8th, by complainant. Was it or not most generally known to the citizens of the different counties composing the judicial circuit in which Jackson County is situate, as well, also, as to the people of Jackson County, and to the members of the bar in the circuit, that the Judge of that Circuit was absent from home during the time appointed by law for holding the Courts in that Circuit or district, in the spring of 1846, and would not be back to hold the Courts therein at the times prescribed by law? if yea, was it not so known by Mr. Byers, the defendant in this suit?

Interrogatory 9th, by complainant. Do you or not know at what time William F. Denton, late of Batesville, died? If yea, please state when, and if his death was not known to Mr. Byers some time previous to the time fixed by law for holding the Circuit Court of Jackson County in the spring of 1846.

Interrogatory 10th, by complainant. Was or was not C. F. M. Noland, Esq., in the habit, for many years past, of attending the Jackson County Circuit Court? If nay, did not Wm. Byers, the defendant, know the fact long before, and at the time of said sale? and did not the defendant, Byers, know that Mr. Noland was not, nor could be there at the time of said sale?

Interrogatory 11th, by complainant. Is the defendant, William Byers, a practising attorney in the State of Arkansas? If yea, is he not in the habit of attending the Courts in the 3d Judicial Circuit in and for the State of Arkansas? If yea, how long has he been attending the Courts in said Circuit?

Interrogatory 12th. Did John H. T. Webb, then Sheriff of Jackson County aforesaid, on the day on which he sold the lands aforesaid, and previous to the sale of them, at the request of William Byers, or otherwise, go around the town and proclaim, or give public notice of the fact, that he would then sell said lands?

Interrogatory 13th, by complainant. Do you or not, know of any other fact or circumstance, that will be of any advantage to either party in this suit? If yea, please state them?

Interrogatories to be propounded to James Robinson, a witness in behalf of Francis Surget, the complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted the parties to the above suit, or either of them, and how long have you known them?

Interrogatory 2d, by complainant. Were you, or not, ever Sheriff of Jackson County, in the State of Arkansas? If yea, how long, and when did you act as Sheriff?

Interrogatory 3d, by complainant. While you were acting as Sheriff of Jackson County, what was the practice relative the sales

of land levied on by virtue of executions, when the Circuit Court failed to be held or opened on the first day of the term prescribed by law, the day appointed for the day of such sale?

Interrogatory 4th, by complainant. Was it, or not, generally known or understood by the citizens of Jackson County, that Real Estate would not be sold, unless the Circuit Court was open at the time, and on the day of such sales? If yea, why were the sales suspended or postponed, unless the Circuit Court was in session?

Interrogatory 5th, by complainant. Was it or not, the opinion or general belief of the citizens of Jackson County, as well as those of other sections of the State, that a sale of Real Estate under an execution, was null and void, unless the Circuit Court was open at the time of sale?

Interrogatory 6th, by complainant. Were you or not, present at a sale held by the late Sheriff (John H. T. Webb), of Jackson County, in the spring of 1846, at which a large quantity of land owned by Francis Surget, the complainant, or by him and others, were sold? If yea, please state if you know, to whom they were struck off? How many persons were present at such sale? Who were present at said sale? and who bid, if anybody, but the defendant in this suit? And if any bids, the amount bid?

Interrogatory 7th, by complainant. Are you, or not, well acquainted with all, or nearly all the lands owned and taxed, or that were owned and taxed, to Francis Surget and John Ker, in Jackson County, before and up to May, 1846? If yea, please state what you suppose the lands sold by the Sheriff in the spring of 1846, being in all some 14,000 acres or more, as the complainant's, to be worth?

Interrogatory 8th, by complainant. Out of the lands belonging to the complainant and John Ker, in the spring of 1846, lying in Jackson County, are there not many 40 and 80 acres tracts, which were known to the Sheriff, Webb, as their lands, worth much more than some thirty-five or forty dollars.

Interrogatory 9th, by complainant. Are you, or not, generally in the habit of noticing the advertisements posted up by the sheriffs and other persons of the sales of lands and other property? If yea, did you, or not, ever see a notice of the sale of Surget's lands by Sheriff Webb posted up at any place in Jackson County, during the spring of 1846, and if there had been as many as three stuck up in each Township in the County, would you not have been very apt to have seen some of them?

Interrogatory 10th, by complainant. Had you believed at the time of the sale of the lands above spoken of, that the sale under the circumstances was or had been legal and good in law, would you or not had bid for some of the lands sold much more than they were struck off to the defendants Byers and Dougherty at?

Interrogatory 11th, by complainant. Were any of the costs in the

case of Wm. B. Duncan & Co. v. Noadiah Marsh, and by virtue of which the lands spoken of above were sold, due and owing to you, as late sheriff? If yea, please state if you were, at the time of issuing the execution under which said sale was made, or at any time long previous, demanding the amount of the defendant, Noadiah Marsh.

Interrogatory 12th, by complainant. Was it not generally known by the citizens of Jackson County, that the Judge who presided in the 3d Judicial Circuit, in the State of Arkansas, was absent from his Circuit during the spring of 1846, and would not be back to hold the Courts in the different counties that spring?

Interrogatory 13th, by complainant. Please state whether or not the Sheriff (Webb) on the day he sold the lands spoken of, belonging to Francis Surget, the complainant, came to you and asked you your opinion about the propriety of his selling those lands on that day, as there was no Court open, and if yea, please state what you told him.

Interrogatory 14th, by complainant. How many persons were there present at the time of the sale of the complainant's lands spoken of above as having been held in the spring of 1846.

Interrogatory 15th, by complainant. Do you know of any other facts or circumstances that will be of any advantage to either party in this suit, at the final hearing thereof? If yea, please state them.

Interrogatories to be propounded to Atrides Crow, a witness in behalf of the complainant in the above-mentioned suit:

Interrogatory 1st, by complainant. Are you acquainted with the parties in this suit, or either of them, and if yea, how long have you known them?

Interrogatory 2d, by complainant. Were you, or not, present at the time of the sale by the late Sheriff (J. H. T. Webb) of Jackson County, of a large quantity of lands lying in said County, belonging to the complainant, Francis Surget, or to him and others, and which were levied on and sold by virtue of an execution in favor of one Noadiah Marsh, for his costs in a suit instituted in the Circuit Court of said County, in the name of Wm. B. Duncan & Co. v. Noadiah Marsh? If yea, state how many persons were present at said sale, and what persons were those present. Whether or not the Circuit Court of Jackson County was in session at the time of said sale, and when the sale took place.

Interrogatory 3d, by complainant. Have you, or not, ever seen the execution under and by virtue of which said lands spoken of by you above were levied on and sold? If yea, state in whose handwrite the execution is written.

Interrogatory 4th, by complainant. What was the belief or general opinion relative to the validity of said sale so held by Sheriff Webb, no Court being open as above stated?

Interrogatory 5th, by complainant. Are you Clerk now, or were you previous hereto Clerk of the Jackson County Circuit Court? and

if yea, what time was it that the said complainant, by and through his agent, W. H. Ringo, deposited with you, as Clerk, the balance of the costs purporting to be due on the execution or judgment under which the said complainant's lands were sold?

Interrogatory 6th, by complainant. Do you know any other fact or circumstance, that will be of any advantage to either party in this suit? If yea, please state them?

Interrogatories to be propounded to James J. Waddill, a witness for the complainant in the above suit?

Interrogatory 1st, by complainant. Are you, or not, a citizen of Jackson County, and State of Arkansas? If yea, please state whether or not you were in the habit of riding through the County, considerable, during the spring of 1846? If yea, please state whether or not you ever saw a notice or advertisement of a sale of a large quantity of lands lying in said County, levied on and taken in execution as the property of the complainant, or John Ker, Stephen, and William B. Duncan, by the late Sheriff Webb? If nay, would you or not have noticed or observed an advertisement, containing a description of some 14,000 *thousand* acres of land, provided there had been as many as three put up in each Township in said County?

Interrogatory 2d, by complainant. Are you acquainted with the description, quality, and location of the lands sold to defendants, Wm. Byers and A. J. Dougherty, by Sheriff Webb, as the property of the complainant, or of him and others, in the spring of the year 1846? If yea, please state what was then the value of said lands?

Interrogatories propounded to John Robinson, a witness in behalf of the to be complainant in this cause.

Interrogatory 1st, by complainant. Were you in the habit of riding through the County of Jackson much during the spring of 1846? If yea, please state whether or not you were at the most public places in the several townships in said county within 20 days preceding the May Term of the Circuit Court, and did you at any time or place see advertised, by notices in writing, a sale of lands belonging to the complainant, or John Ker, Stephen and Wm. B. Duncan, or either of them, as taken and levied on by the late sheriff (Webb), by virtue of an execution to him directed? If yea, state when and where. If any, state whether or not you would most probably have observed such a notice if there had been as many as three posted up at three of the most public places in each township in Jackson County.

Interrogatory 2d, by complainant. Were you in Elizabeth, Jackson County, on the day of the sale of the lands referred to in the first interrogatory? If yea, please state the then number of habitations in said town, public houses, &c., and their distance from the court-house, and whether or not you heard of the sale of said lands before the sale was over? and whether, if a legal notice or proclamation of such sale had been made, such sale could have taken place without your knowledge?

Interrogatories to be propounded to William H. Morris, a witness in behalf of the complainant in this suit.

Interrogatory 1st, by complainant. Do you or not know the parties to the above suit? If yea, please state how long you have known them.

Interrogatory 2d, by complainant. Are you a resident of the town of Elizabeth, the county seat of Jackson County and State of Arkansas? If yea, how long have you resided there, and what is your occupation?

Interrogatory 3d, by complainant. Were you in Elizabeth on the day of the sale of certain lands sold as the property of Francis Surget, on the 18th day of May, 1846, by the late sheriff (Webb) of Jackson County? If yea, please state whether or not you ever knew anything of said sale taking place until it was all over.

Interrogatory 4th, by complainant. If there had been posted up in the County of Jackson as many as three advertisements or notices of the sale of as large an amount of lands as 14,000 *thousand* acres, describing them by metes and bounds, posted up 20 days before the day of sale in three of the most public places in each township in Jackson County, would you have noticed or observed them or some one of them?

Interrogatory 5th, by complainant. Did you or not ever pay to any person any costs in a certain suit instituted in the Circuit Court of Jackson County, wherein William B. Duncan, Stephen Duncan, John Ker, and Francis Surget, under the style of Wm. B. Duncan & Co. were plaintiffs, and Noadiah Marsh was defendant? If yea, please state to whom and the amount of costs you paid to each; and for whom did you pay them?

Interrogatory 6th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party in this cause? If yea, please state them.

Interrogatories to be propounded to Noadiah Marsh, a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Please state whether or not you ever directed an execution to issue for your costs in a suit instituted by Wm. B. Duncan in the name of John Ker, Stephen Duncan, Francis Surget, and W. B. Duncan, in the name, and style of W. B. Duncan & Co., as plaintiffs, against you, as defendant, in the Jackson Circuit Court? Whether you know of any execution having issued at any time previous to the spring term of the Jackson Circuit Court, for the year 1846, for the costs? Whether you know of said execution having been levied on some 14,000 acres of the lands belonging to the complainant in this suit, or to him and others, until some time after a levy and sale of said lands?

Interrogatories to be propounded to Charles F. M. Noland, Esq., a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted with the

parties to this suit, or either of them? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you ever in partnership in the practise of the law with one William F. Denton, Esq., late of Batesville, Arkansas? If yea, when did your partnership cease or terminate? When did Wm. F. Denton depart this life? Were you or not ever interested as attorney in a certain suit brought in the name of Wm. B. Duncan and Co. v. Noadiah Marsh, in the Jackson County Circuit Court? Were you or not in the habit, for some years past, of attending the Circuit Court of Jackson County? If nay, how often have you been there for the last six or eight years? and were you there at the Spring Term of said Court for the year A. D. 1846? Did or did not the defendant, Mr. Byers, know that you were not in the habit of attending said Court? If yea, did he not know that you would not be there at the Spring Term of 1846?

Interrogatory 3d, by complainant. Was it or not considered and the general belief that a sale of real estate under execution held at a time when the Circuit Courts were not open, was unauthorized and illegal anterior to the change of the law by the General Assembly of the State of Arkansas at the session of 1846, regulating sales of real estate under execution?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party in this suit, at the final hearing thereof? If yea, please state them.

Interrogatories to be propounded to Henry F. Fairchild, Esq., a witness for said complainant.

Interrogatory 1st, by complainant. Did you or not ever tender to the defendant, Byers, for and in behalf of the complainant, fifty dollars, and request him to relinquish whatever right or title he may have in any manner acquired by virtue of a sale of the lands belonging to said complainant, in Jackson County, Ark., sold by the Sheriff, John H. T. Webb, in the spring of 1846? If yea, when, and what did said Byers say at the time?

Interrogatories to be propounded to John Beard, a witness for the complainant in the above cause.

Interrogatory 1st, by complainant. Are you acquainted with the parties in the above suit, or either of them? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you living in the County of Jackson and State of Arkansas, during the months of April and May, in the year of 1846? If yea, in what Township?

Interrogatory 3d, by complainant. Was there or not a notice or advertisement of a sale of a large quantity of lands, levied on by virtue of an execution by the late Sheriff, John H. T. Webb, posted up at your house, in the month of April or May, 1846, or in any other house in Bayou Township?

Interrogatory 4th, by complainant. What houses are or were, in the spring of 1846, the most public places in Bayou Township, Jackson County, Arkansas.

Interrogatory 5th, by complainant. Do you know any other fact or circumstances that will be of any benefit to either party in the above suit? If yea, please state them.

Interrogatories to be propounded to Robert Clements, William Kenders, Joshua Nance, Thomas S. Shaddick, George W. Barkley, and Samuel Beard, witnesses for said complainant in the above suit:

Interrogatory 1st, by complainant. Are you and were you citizens, and residing in Bayou Township, in Jackson County, and State of Arkansas, during the spring of 1846? If yea, was there at any time during the months of April and May, posted up by John H. T. Webb, the then Sheriff of Jackson County, or any other person for him, at either of your houses or shops, or any other of your buildings, a notice or advertisement in writing, of the sale of a large quantity of land, taken and levied by virtue of an execution, as the property of William B. Duncan, John Ker, Stephen Duncan, and Francis Surget, or either of them? If nay, was there or not such a notice posted up at any other house or place in Bayou Township, and if there had been, would you have been likely to have seen it?

Interrogatory 2d, by complainant. Please state what places or houses were most public and most frequently visited or resorted to in Bayou Township, in the spring of 1846.

Interrogatory 3d, by complainant. Do you know any other fact or circumstance that can be of any benefit to either party in the above suit? If yea, state them.

Interrogatories to be propounded to Mrs. Roddy, widow of Major John Roddy, deceased, a witness for the complainant in the above suit:

Interrogatory 1st, by complainant. Were you residing in Jackson County, State of Arkansas, in the spring of 1846? If yea, was or was not your house, where you then resided, as well as now reside, a place of very frequent resort by the citizens of said County, if yea, does it not stand in such a situation as to make it one of the most convenient places for persons passing to call, in that portion of the County? If yea, state whether there was posted up at your house, during the months of April or May, in the year 1846, a notice in writing, containing a description of a large quantity of lands, purporting to have been taken in execution as Francis Surget's lands, and to be sold by the late Sheriff of said County, John H. T. Webb.

Interrogatory 2d, by complainant. Is it customary or not for the sheriffs of Jackson County, when they have any notice to post up, to place one up at your house? If yea, how long has such been the custom?

Interrogatory 3d, by complainant. Do you know any other fact or circumstance that will be of any benefit to either party in this suit? If yea, please state them.

Interrogatories to be propounded to Saylors and Green Silvey, former Clerks of the Jackson County Circuit Court, witnesses for the complainant in the above suit.

Interrogatory 1st, by complainant. Have you or either of you, or had you in the spring of 1846, any fees due and owing to you, which had accrued to you as Clerk of the Jackson Circuit Court, in the case of Wm. B. Duncan & Co. v. Noadiah Marsh? If yea, were you demanding the payment of them from said Marsh, at any time previous to May, 1846? If yea, when did you make demand of said fees or costs so due you of said Marsh?

Interrogatory 2d, by complainant. Did you or either of you ever direct an execution or fee bill to issue against the plaintiffs or defendants in said suit, for the purpose of enforcing the payment of your costs? If yea, when and to whom was such request made?

Interrogatory 3d, by complainant. Did you or either of you ever know of an execution having been issued in said suit for the costs, at any time previous to the levy and sale of a large quantity of lands, belonging to Francis Surget, one of said plaintiffs? If yea, when did you first acquire such knowledge of the issuing of said execution, levy, and sale?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstances that will be of benefit to either party in the above suit? If yea, please state them.

Interrogatories to be propounded to A. W. Lyon, a witness for said complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted with the parties to the above suit? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you ever subpœnaed and in attendance as a witness in a certain suit instituted in the Jackson County Circuit Court, wherein William B. Duncan & Co. were plaintiffs, and Noadiah Marsh, was defendant? If yea, did you ever prove up your fees as a witness? If yea, were you at any time anterior to April, 1846, demanding the payment of your fees from the defendant, or any other person? If yea, at what time and of whom? and if nay, did you or not ever order execution to issue against the plaintiffs in said suit to collect your fees from said plaintiffs? and if nay, when did you first learn of the issuing of such execution and sale under it of the plaintiff's lands?

Interrogatory 3d, by complainant. If you had been anxious for your fees in the foregoing case, or very solicitous to have them paid, would you have ordered execution to issue, or have made a request and demand on the plaintiffs in the suit for them first?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party to this suit at the final hearing thereof? If yea, please set them forth fully and at large in your answer.

The following interrogatory to be propounded to each and every one of the witnesses above-named, after all the interrogatories for each of said witnesses have been put, and answered to, by them respectively, viz.:

Do you know or can you set forth any other matter or thing which may be of a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

FRANCIS SURGET,
Complainant.

W. H. & A. H. RINGO and
RINGO & TRAPNALL,
Solicitors for Complainant.

United States of America, District of Arkansas.

In the United States Circuit Court, on the Chancery side thereof.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY,
Defendants.

Interrogatories to be administered to the following witness in behalf of the complainant.

Interrogatories to be propounded to Albert H. Ringo, a witness for complainant.

Interrogatory 1st, by complainant. State whether or not you, as agent for the complainant, ever called on the defendant, William Byers, and requested of him the relinquishment of whatever title or interest, if any, he had of, in, or to certain lands struck off to him at a sheriff's sale in Jackson County, Arkansas, sold on the 18th of May, 1846, as the property of said complainant, on the payment or refunding the amount of money paid out by said Byers, with interest and costs? If yea, state when you called on him; the amount of money then tendered him by you as agent aforesaid; the amount offered; and also what Mr. Byers said relative to the same?

Interrogatory 2d, by complainant. Do you know of any other fact or circumstance that can be of any benefit or advantage to either party at issue in this cause, material to the subject of this your examination, or the matters in question in this cause? If yea, set them forth fully and at large in your answer?

Interrogatories to be administered to William H. Ringo, a witness for said complainant.

Interrogatory 1st, by complainant. Did you not, as agent of Francis Surget, the complainant, ever pay or cause to be paid the

costs due in the case of William B. Duncan & Co. v. N. Marsh, brought or pending in the Jackson County Circuit Court? If yea, when and about what time, and to whom did you pay them?

Interrogatory 2d, by complainant. Do you or not know of any other circumstance or facts, matter or thing, which may be of any benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set them forth in your answer.

FRANCIS SURGET,
Complainant.
By WM. H. & A. H. RINGO, and
RINGO & TRAPNALL,
Solicitors for Complainant.

United States of America, District of Arkansas.

In the U. S. Circuit Court in Chancery.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY,
Defendants.

Interrogatories to witnesses in behalf of the Complainant.

Interrogatories to be propounded to William B. Duncan, a witness for said complainant, in the above suit.

Interrogatory 1st, by complainant. Did you institute or cause to be instituted in the Circuit Court of Jackson County, State of Arkansas, a suit in the name of William B. Duncan, Francis Surget, Stephen Duncan, and John Ker, against one Noadiah Marsh? If yea, about what time? who did you employ as attorney? and what was the result of said suit? Did you or not ever inform the complainant, Francis Surget, John Ker, or Stephen Duncan, or either of them, of the institution and existence of said suit?

Interrogatory 2d, by complainant. Did you ever hear or know that judgment was rendered in said suit against the plaintiffs for costs of the suit? If yea, about when did you first learn that fact?

Interrogatory 3d, by complainant. Were you formerly a citizen of Arkansas? If yea, did you reside in Arkansas at the time you caused said suit to be brought against Marsh? when did you remove from the State of Arkansas to where you now reside, or to the State of Texas?

Interrogatory 4th, by complainant. Did Francis Surget, John Ker, or Stephen Duncan, ever reside in Arkansas? If yea, when and where?

Interrogatory 4*th*, by complainant. Do you know or can you set forth any other matter or thing which may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the

matters in question in this cause? If yea, set forth the same fully and at large in your answer?

FRANCIS SURGET,
Complainant.
By WM. H. & A. H. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 2d October, 1848, Wm. Field, Clerk, by John T. Trigg, Deputy Clerk.

District of Arkansas, *sct.*

I, William Field, Clerk of the Circuit Court of the United States, within and for the District of Arkansas, do hereby certify that the foregoing interrogatories in the case in the caption thereof mentioned, are truly copied from the originals now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, this 16th day of December, A. D. 1848, and in the 73d year of American Independence.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

State of Arkansas, County of Independence and Jackson.

FRANCIS SURGET,
v.
WM. BYERS and A. J. DOUGHERTY. } In Chancery.

Depositions of witnesses taken before me, David W. Lowe, Commissioner, by virtue of the appointment and dedimus to me directed, issued out of and under the seal of the Circuit Court of the United States, for the District of Arkansas, on the 15th day of December, A. D. 1848, hereto attached, and upon the interrogatories which accompany said commission in the case now pending in said Court, wherein Francis Surget is complainant and William Byers and A. J. Dougherty are defendants.

H. F. Fairchild, a witness in said interrogatories mentioned, being to me produced in the County of Independence, on the day of December, 1848, and being by me first duly sworn upon the Holy Evangelists of Almighty God to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy between said parties, did, upon his said oath, depose as follows, to wit:

To the 1st Interrogatory by complainant he answers:

That about the first of March, 1847, I had a conversation with William Byers, about his purchase of some lands in Jackson County, belonging to Francis Surget, which purchase was then spoken of as having been made by said Byers under an execution that issued from

the Circuit Court Clerk's Office in Jackson County and in the spring of 1846, at the time for holding the Circuit Court of Jackson County.

And during the conversation I informed Mr. Byers that I, as the agent of Mr. Surget, and for him, requested and required him to relinquish all the title he might have acquired to those lands under the sale of them by the sheriff and the sheriff's deed, and to reimburse Mr. Byers for all costs, expenses, and loss of moneys which he had sustained in the purchase, I offered to pay him fifty dollars, and was proceeding to count out the sum and make a formal tender of it, when Mr. Byers said that it was unnecessary to do so, that he should not comply with the demand, and that I need not present the money to him. I had the money in my hand, and was proceeding to count it out, and should have done so, and tendered it to Mr. Byers, but for his refusal to receive it and to convey or relinquish his claim on the lands alluded to, to Mr. Surget.

John H. T. Webb was the sheriff of Jackson County when the sale to Mr. Byers was made.

H. F. FAIRCHILD.

Sworn to and subscribed before me, this 20th day of December, 1848.

D. W. LOWE,
Commissioner.

And at the same time and place appeared before me, W. C. Bevens, a witness in said cause, and being by me first sworn upon the Holy Evangelists of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy between said parties, did upon his oath aforesaid depose as follows:

To the 1st question, he answers. I am acquainted with the defendants, William Byers and Andrew J. Dougherty; the complainant I am not acquainted with; I have known William Byers since the latter part of February, A. D. 1845.

I do not recollect when it was that I became acquainted with Dougherty, though it was some time in 1845; he left this country since, and is not now a resident of this State, as I am informed.

To the 2d interrogatory, he answers (2). I was at the county seat of Jackson County at the spring term of the Circuit Court of said county, commencing, as I believe, on the third Monday after the fourth Monday in April, A. D. 1846, and was present part of the time during the sale of a large quantity of lands made by John H. T. Webb, then acting as Sheriff of said County of Jackson. At the time of this sale I was partially a stranger in the country, and knew nothing of what was going on except what I saw. I think that the sheriff said at the time the sales were making, and while I was present, that the land was sold as the land of Duncan & Co., but I am unable to say at whose instance or order it was sold. William

Byers, Esq., purchased all the lands that was sold while I was present, under this execution, which was several tracts, but I do not know how many.

Answer to complainant's 3d interrogatory. Judge William Conway B., the then Judge of the 3d Judicial Circuit, failed, in the spring of A. D. 1846, to hold any of the spring terms of the Circuit Court of said Circuit, which that time commenced at Randolph County and continued round to Jackson County, it being the last Court but Batesville on the Circuit. It strikes me that before the time the Jackson Circuit Court should have been held in its regular term, it was made known by a publication in some newspaper in State, that Conway B. was sick in Hempstead County, and would not be able to attend any of his courts at the spring term, 1846. On the day of the commencement of the regular term of the Circuit Court of Jackson County, I went down to the county seat of that county, knowing there would be no Court, but was interested as counsel in getting the sale of a negro woman put off, that was levied on to satisfy an execution controlled by William Byers, as an attorney. Early in the forenoon of Monday of the week the Court should have been held, and the day on which the property (negro woman) was to have been sold, I met William Byers, and thereupon Mr. William Byers and myself, and John H. T. Webb, then acting as sheriff of that county, went out to have an understanding in reference to the course said sheriff should take in making or continuing sales. Mr. William Byers cheerfully assented to postpone the sale *the sale* of the negro woman; and thereupon, at the instance of Webb, acting as such sheriff, the question came up as to the right to sell on that day unless the Court was in session; if I am not mistaken, both Mr. Byers and myself stated to the sheriff (Webb) that it was a question on which different opinions were entertained, though it was not settled. Mr. William Byers stated further at the time, that he would not insist on a sale that day under any except one execution which he controlled, and that was to make a small amount of costs; he (Mr. Byers) did not state, so well as I recollect, in whose favor the execution was. It was then agreed between myself, William Byers, Esq., and John H. T. Webb (then sheriff), that each attorney should control his own executions, and sell if he was disposed, which agreement was still subject to the agreement between Wm. Byers and myself as to the sale of the negro woman.

Answer to interrogatory the 4th. I have already stated what Mr. Wm. Byers said on the day of sale, in any way relating to the sales of property that day under execution; I recollect nothing unusual in the manner of Mr. Byers in this conversation. He (Wm. Byers) simply said to me, and in the hearing of the sheriff, that the sale he insisted on under execution was for a small amount, and for costs alone, and may have stated the amount, and I think did, but I was a total stranger at the time to the entire matter, and did not recol-

lect it long. I recollect he stated at the time that the execution was against Duncan & Co. The impression on my mind at the time, from the amount to be made, and it being for costs, and from my having never heard of the name of Duncan before that time as identified with this section of country, was, that property sufficient of a deceased or absent judgment debtor had been found, out of which to make the costs of such, and that the question of legality of sale under the execution would never be raised.

Interrogatory 5th. Answer. I was present at the time, or at least a part of the time, this sale was going on; the sale was held, I think, on the third Monday after the fourth Monday in April, A. D. 1846. I cannot say how many persons were present at the sale. I distinctly recollect there were very few persons in the house; it was a cloudy day; perhaps it rained none in the forenoon. I do not recollect, but some time after dinner-time I went to the court-house, where the sale was going on, and went into the house; it was raining, and the sale was in the house, or inside the door, and the persons present were in the house. It was a cloudy day, and rained, I think, pretty much all the afternoon.

Interrogatory 6th. Answer. I am a practising attorney in the State of Arkansas, and have been in the habit of attending the Circuit Court of Jackson County since the spring of 1845. The sale I allude to, was previous to the 21st Dec'r, 1846, and up to the 21st Dec'r, 1846, I think it was the usage and practice of the sheriffs of this part of the State, to postpone the sales under execution, unless the Court was open.

I do not recollect what property, or how much, or under how many executions, there was advertised for sale on that day, but all the sales for that day were postponed, except the sale under the execution against Duncan & Co.

Interrogatory 7th. Answer. Although I was frequently present with the legal profession and the people, when this question was made and discussed, it is impossible for me to say, whether the general opinion of either was, that such sale was legal and valid, or void. The Circuit Court of Jackson County was not in session or open, when the sale above alluded to took place.

Interrogatory 8th. Answer. The answer to this I have given above.

Interrogatory 9th. Answer. William F. Denton departed this life in the summer of 1845. Between that time and the spring of 1846, I have heard Mr. William Byers speak of the death of Mr. Denton.

Interrogatory 10th. Answer. Col. C. F. M. Noland has never attended the Jackson Circuit Court, as an attorney, since I came into this County; indeed, I never saw him there but once, and then but a few days. I am unable to say whether, or no, Mr. Byers knew that Col. Nowland would or would not be there.

Interrogatory 11th. Answer. The defendant, William Byers, is a practising attorney in the State of Arkansas. Mr. Byers has been a practising attorney at the Court of Jackson County, in said circuit, for several years; I don't know how long.

Interrogatory 12th. Answer. I know nothing about a notice given by Webb, as sheriff, on that day. If he went round and gave notice, I did not hear it, or of it; nor do I recollect what induced or prompted me to go to the court-house during the sale.

Interrogatory 13th. Answer. I believe I know nothing more that will benefit either party to the suit.

W. C. BEVANS.

Sworn to, and subscribed before me, this 20th day of December, 1848.

D. W. LOWE,
Commissioner.

And at the same time and place, appeared before me, Charles F. M. Noland, a witness in the above cause, and being by me first sworn upon the Holy Evangelists of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, between said parties in said suit, did, upon his oath aforesaid, depose as follows to the questions propounded to him and accompanying said commission, to wit:

To the first interrogatory by complainants, answers: Yes, both of them, and about some ten or twelve years.

To the second interrogatory, by complainants, answers: Yes; William F. Denton, Esquire, late of Batesville, and myself, were in partnership, in the practice of law; our partnership terminated on or about the 16th of March, in the year (1840) one thousand eight hundred and forty. The said Denton died in the summer of 1845, about the last of August, and never had any interest, as an attorney or otherwise, in a certain suit brought in the name of Wm. B. Duncan & Co. v. Noadiah Marsh, in the Jackson County Circuit Court. I have not been in the habit of attending the Circuit Court in Jackson County for many years, and have not been to that Court, that I know of, for the last six or eight years as an attorney, and but once in that time on my own business. I do not know that Wm. Byers, one of the defendants, was cognizant of the fact that I was not in the habit of attending said Court, but I presume he was. I cannot say that Wm. Byers, the defendant, knew that I would not be there at the spring term in 1846.

To the third interrogatory, by complainant, answers: It was considered illegal to sell property under execution, except when Court was in session.

To the fourth interrogatory, by complainants, answers: I do not.

C. F. M. NOLAND.

Sworn to and subscribed before me, this 24th day of December, 1848.

D. W. LOWE,
Commissioner.

And at the same time and place personally appeared before me A. W. Lyon, a witness in said cause on the part of the complainant, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said suit, did, upon his said oath, depose as follows, in answer to the questions propounded for him to answer in said suit, to wit:

To the first question, he answers: I am acquainted with them, and have known them some eight or ten years.

To the second question, he answers: I was a witness in said case mentioned in said question, and in attendance some two or three terms of the Court as such witness. I do not remember whether I ever proved up my attendance and fees as such witness; I never, previous to April, 1846, or afterwards, demanded my fees from the defendant, or any other person, nor did I ever order execution to issue against the plaintiffs in said suit to collect my fees from them. Some time in June, 1846, William Byers, one of the defendants in this suit, came to me, and informed me that five dollars and some cents of my fees, as witness in the case mentioned in said question, had been collected, but did not inform me in what manner it had been collected; subsequently to this, I learned of the issuing of the execution and the sale of the plaintiff's lands.

Answer to third question by complainant. I suppose if I had been solicitous for my fees in said case, I would have first ascertained who were liable for them, and having learned that the plaintiffs were, have demanded payment from them first, believing that they would have paid them without any difficulty, or the necessity of any execution to collect them.

Answer to fourth question by complainant. I know of no other fact or circumstance which would benefit either party in this suit.

A. W. LYON.

Sworn to and subscribed before me, this 20th day of December, 1848.

D. W. LOWE,
Commissioner.

Personally appeared before me, in the town of Elizabeth, in Jackson County, Arkansas, on the 21st day of December, 1848, William H. Morris, a witness in the above cause, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said suit, and the questions propounded to him, did, upon his said oath, depose as follows to said questions:

To the 1st question, by complainant, he answers. I do not know Francis Surget; but I have known the defendants, William Byers and A. J. Dougherty, some six or eight years.

Answer to 2d question by complainant. I am a resident of said town, and have been for some seven years, and am merchandizing.

Answer to 3d question by complainant. I was in said town on the day of said sale, but was not present at the sale, and knew nothing of it until it was nearly over.

Answer to 4th question by complainant. I have no doubt if such notices, as mentioned in said question, had been posted up in three of the most public places in each township, in the County of Jackson, I should have seen and noticed some of them.

Answer to 5th question by complainant. I paid, in 1843, to Green Silvy, Clerk of Jackson County Circuit Court, a fee bill of $6 27½, as fees in said case, and to Haggard, Clerk in the same case.

Answer to 6th question by complainant. I know nothing.

W. H. MORRIS.

Sworn to and subscribed before me, this 21st day of December, 1848.

D. W. LOWE,
Commissioner.

And at the same time and place appeared before me, Noadiah Marsh, a witness in the above case, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, and in answer to the questions propounded for him to answer in said case, did, upon his said oath, depose as follows, to wit:

Answer to 1st question by complainant. I do not recollect at this time that I ever directed an execution to issue in said case for my costs; there was an execution issued in said case, but at what time I do not know, nor do I recollect when I first heard that such an execution had issued, and I do not know whether said execution had been levied on the lands of complainant, or his lands with others, previous to the spring term of Jackson County Circuit Court for 1846, or not.

N. MARSH.

Sworn to and subscribed before me, this 22d day of December, A. D. 1848.

D. W. LOWE,
Commissioner.

And at the same time and place appeared before me Atrides Crow, a witness in said case, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to

the matters in controversy in said case, and in answer to the questions propounded to him, did upon his said oath depose as follows, to wit:

Answer to 1st question by complainant. I am not acquainted with the complainant, but have known the defendants some four or five years.

Answer to 2d question by complainant. I think I was present at said sale, or some thirty steps distant, but so as to see and hear what was going on; and I think there were some eight or ten persons present at the sale, among whom were Mr. Byers and A. J. Dougherty, the defendants, the Sheriff Webb, and J. C. Pugh, and perhaps J. J. Witherspoon. The Circuit Court of Jackson County was not in session at the time of the sale, nor during the Spring Term of 1846, at which Term the sale took place.

Answer to 3d question by complainant. I have seen the execution mentioned in said question, and I believe it was in the handwriting of Wm. Byers, the defendant, and from the acquaintance I have of his handwriting, I think I would it at most any place I should see it.

Answer to 4th question by complainant. I think there were different opinions in regard to the validity of such sales, some thinking them good and legal, and some believing they were illegal and void.

Answer to 5th question by complainant. I am not now Clerk of said Court, but was Clerk from September, 1846, to September, 1848, and W. H. Ringo, as agent of complainant, deposited with me as Clerk the balance of the costs in the case of Wm. B. Duncan & Co. v. N. Marsh aforesaid, in the spring of 1847.

Answer to 6th question by complainant. I know of nothing more.

ATRIDES CROW.

Sworn to and subscribed before me, this 22d day of December, 1848.

D. W. LOWE,
Commissioner.

And in said County of Jackson personally appeared before me John Robinson, a witness in the above case, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said suit, and in answer to the questions in said case propounded for him to answer, did upon his said oath depose as follows, to wit:

Answer to 1st question by complainant. I was in the habit of travelling about through the County of Jackson a good deal during the spring of 1846, and previous to the Spring Term of the Jackson County Circuit Court for said year. I do not know that I was at the most public places in all the Townships in said County; but I was at the most public places in some of the Townships, and I do not recollect that I saw any such notices or advertisements as are mentioned in said question; and I think I should certainly have seen and

noticed some of said notices and advertisements, if three of them had been put up in the most public places of the each Township in said County of Jackson, previous to the day of said sale of lands.

Answer to 2d question by complainant. I was in said town on the day of said sale, and walked to the court-house while the sale was progressing. In said town there were at said time of sale some six different residences, three stores, one public house, two groceries, and were severally situated from sixty to some three hundred yards from the court-house. I knew nothing of the sale, and heard no proclamation of the same, and only found out that the sale was going on by walking to the court-house, and I did not know that there was to be any sale by the Sheriff of Jackson County on said day. When I reached the court-house, when and where the sale was going on, there were no persons present in attendance but the Sheriff Webb and Wm. Byers, the defendant in this suit, as I recollect. It is most probable I should have heard the proclamation of said sale, if it had been made in the usual and legal manner, as they are generally heard by those in town, or at least by some of them, by whom the information that a sale is about taking place is generally made known to the others in town.

JOHN ROBINSON.

Sworn to and subscribed before me, this 22d day of December, 1848.

D. W. LOWE,
Commissioner.

In the County last aforesaid personally appeared before me James J. Waddill, a witness in the foregoing cause, and being by me first duly sworn upon the Holy Evangelists of Almighty God to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did upon his said oath depose as follows in answer to the questions in said cause propounded to him, to wit:

Answer to 1st question by complainant. I am a citizen of said County of Jackson, and was frequently through some four townships in said County in the spring of 1846, and previous to the spring term of the Circuit Court of said County, and I never saw any such notices or advertisements as those mentioned in said question, or any notice of the sale of any of the lands belonging to the complainant, or any of the persons mentioned in said question; and I think if as many as three notices containing some 14,000 acres of land, or even a much smaller quantity, had been put up in each township in said County, I should certainly have seen some of them when passing about through the county, as I generally notice advertisements particularly.

Answer to 2d question by complainant. I am acquainted with a large portion of those lands sold to Byers and Dougherty, and have

a general knowledge of the quality of the most of them; and think that those lands with which I am acquainted at the time of sale, were worth from two to three dollars per acre, and at this time they are worth something more.

JAS. J. WADDILL,

Sworn to and subscribed before me, this 22d day of December, 1848.

D. W. LOWE,
Commissioner.

And at the same time and place last aforesaid, appeared before me John C. Saylors, a witness in the cause aforesaid, and being by me first sworn upon the Holy Evangelists of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said suit, did upon his said oath depose as follows, to the questions propounded to him in said cause, to wit:

Answer to 1st question by complainant. I do not recollect whether there were any fees due me at that time in said cause, and I know I was not demanding payment of them, or of any fees in said cause from said Marsh or any other one in the spring of 1846, or at any time previous to the spring term of the Jackson Circuit Court for 1846.

Answer to 2d question by complainant. I never directed an execution or fee bill to issue in said cause, to collect any fees which might be due me as Clerk of said Circuit Court, against either plaintiffs or defendants, or any other person; whether my deputy did in my name and without my orders, I do not know.

Answer to 3d question by complainant. I never knew of any execution having been issued in said cause, to collect costs and fees previous to the said levy and sale of said lands of F. Surget.

Answer to 4th question by complainant. I know of nothing.

JOHN C. SAYLORS.

Sworn to and subscribed before me, this 22d day of December, A. D. 1848.

D. W. LOWE,
Commissioner.

In the County last aforesaid, also appeared John H. T. Webb, a witness in said cause, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause; and upon his said oath depose as follows, in answer to the questions propounded to him in said cause, to wit:

Answer to 1st question by complainant. I am not acquainted with the complainant, but I have known the defendants some eight or nine years.

Answer to 2d question by complainant. I was acting as Sheriff in and for Jackson County in the winter and spring of 1846, and I was personally present and officially acting at the time said levy and sale was made of a large body of lands belonging to Francis Surget, John Ker, William B. Duncan, and Stephen Duncan, or some of them, but cannot at this time say, whether those lands mentioned in said question were the same as those sold at said sale, not having the return on said execution, under which said sale was made, present to examine, but presume they are the same, and would refer to the return on said execution for a correct list of the lands sold at said time, to wit, at the spring term of the Jackson Circuit Court for 1846. The lands at said sale were all sold to William Byers, one of the defendants in this suit, except one or two tracts which were sold to A. J. Dougherty, the other defendant. The execution in the case of W. B. Duncan & Co. v. Noadiah Marsh, under which said levy and sale were made, together with an advertisement containing a list of all the lands levied on and sold, were handed to me by William Y. Haggard, who stated at the time that Mr. Byers, the defendant in this cause, desired all the lands contained in said advertisement levied upon to satisfy said execution, and in obedience to such request of Mr. Byers, as stated by Mr. Haggard, I levied upon all of said lands, and advertised the same for sale at the spring term of the Circuit Court of Jackson County, to satisfy said execution, having copied the advertisement handed me by Mr. Haggard above-referred to, for the purpose of having the lands legally advertised as required by law and as desired by Mr. Byers. At the time of said sale the Circuit Court of Jackson County was not in session, nor was it in session during the spring term of 1846.

Answer to 3d question by complainant. Said lands were sold as above stated, under and by virtue of an execution in favor of the defendant in the case of William B. Duncan & Co. *v.* Noadiah Marsh, in the Circuit Court of Jackson County. The amount of the judgment in said execution, I think, was something between thirty and fifty dollars.

Answer to 4th question by complainant. The amount of property so sold, under said execution, was levied on as above stated, by the request of William Byers, who claimed to control the execution as delivered to me by Mr. Haggard; and on the day of sale Mr. Byers ordered me to proceed with the sale, and dispose of the levy, stating that if the property so levied on would not sell so as to satisfy the execution, he desired to have another execution, in said case, to levy on more property.

Answer to 5th question by complainant. The levy was not at my own option, and if it had been, I should have levied on not more than a few quarter sections of land—but it was at the request of Mr. Byers, as given to me by Mr. Haggard.

Answer to 6th question by complainant. I answer this in answer to 2d question.

Answer to 7th question by complainant. Mr. Haggard died late in the spring or early part of the summer of 1846.

Answer to 8th question by complainant. The statements of Mr. Haggard, and instructions by Mr. Byers, at said time, have been given above.

Answer to 9th question by complainant. The advertisement, I think, was in the handwriting of Mr. Byers; and I cannot now say, without seeing the execution, whether it was in the handwriting of Mr. Byers or Haggard, but my impression is that it was in that of Mr. Haggard.

Answer to 10th question by complainant. On the day of said sale I told Mr. Byers, the defendant, that I did not like to sell the property levied on, under said execution, as the law required it to be sold at the court-house door, and while Court was in session—and at the time there was no Court in session, and would not be during the Spring Term; but Mr. Byers said that he wanted the levy disposed of, and if the property so levied on would not sell for enough to satisfy the execution, he wanted to levy on other property. I still refused to sell, and Mr. Byers commenced writing a written notice to me, requiring me to sell, as he would hold me responsible, and I then told him if he was determined to pursue a rigorous course I would sell, and consequently did so; but should not unless I had been so ordered by Byers, who claimed to control the execution.

Answer to 11th question by complainant. Court was not in session at the time of sale, and a good many were of the opinion that there would be no Court some time previous to the sale, but whether the opinion was general or not, I cannot say.

Answer to 12th question by complainant. I cannot say whether it was the usual custom to postpone all such sales of real estate or not. All other sales on said day were suspended by consent of the attorneys having control of the executions.

Answer to 13th question by complainant. I should not have levied on such an amount of land without instructions.

Answer to 14th question by complainant. I am not acquainted with all of the lands, and of those with which I am acquainted some are worth from three to five dollars per acre, and others are not worth one dollar and a quarter; the general value of all, I cannot tell; there are many 40 acre and 80 acre tracts worth as much or more than the amount of the execution.

Answer to 15th question by complainant. There was a difference of opinion in regard to the validity of such sales, some believing them good and some not; I was asked at the time of such sale my opinion in regard to the validity of said sale, and I told them I thought they would be buying a lawsuit.

Answer to 16th question by complainant. It was furnished me,

and was in the handwriting of Mr. Byers, the defendant, to the best of my recollection.

Answer to 17th question by complainant. I think there were seven.

Answer to 18th question by complainant. I cannot say that I put up three such notices as described in said question in each Township of said County twenty days or more previous to the day of said sale; I put up the most of them myself, and I was in the habit sometimes of sending some of them by trusty and faithful persons to be put up in different parts of the County, and it is possible some of the notices spoken of in this instance might have been sent in that manner, and whether they, or three in each Township were put up or not, I cannot positively say.

Answer to 19th question by complainant. If I had not been instructed I should have levied on some three or four quarter sections.

Answer to 20th question by complainant. I do not recollect that Mr. Byers requested me to go round town and proclaim that I was going to sell F. Surget's lands, or to proclaim that I was going to make any sale, and I think he made no such request, but as I passed to the court-house, I told different persons that I was going to make such sale, and requested them to attend, &c.

Answer to 21st question by complainant. I know of nothing more, except that Mr. Byers, during the sale, told persons present, that he thought the sale was legal, and they would get a good title.

JOHN H. T. WEBB.

Sworn to and subscribed before me, this 23d day of December.

D. W. LOWE,
Commissioner.

In the County last aforesaid, also appeared before me Margaret Roddy, widow of John Roddy, a witness in the aforesaid cause, and being by me first duly sworn to testify the truth, and nothing but the truth, in regard to the matters in controversy in said cause, did upon her said oath depose as follows, in answer to the questions propounded to her to answer, to wit:

Answer to 1st question by complainant. I was residing in said County in the spring of 1846, and for some time previous, and ever since; and my house was a place of very frequent resort by the citizens of said County, and it stands in such a position, and situated as to make it very convenient for persons to call. There was never any such notice of a sale of lands, as spoken of in said question, put up at my residence at any time.

Answer to 2d question by complainant. It has been customary, since I lived here, for sheriffs to put up at my residence a notice of sales which they make.

Answer to 3d question by complainant. I do not know that I do.

MARGARET RODDY.

Sworn to and subscribed before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

And in the County aforesaid, also appeared Robert Clemens, a witness in the above cause, and being by me first sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did, upon his said oath, depose as follows, in answer to the questions propounded to him in said cause.

Answer to 1st question by complainant. I was and still am a citizen of said township and county, and there was no such notice, as I know of, ever posted up in any of the places mentioned in said question, or any *any* other place in said township, that I ever saw or heard of. If there had been any such notices as mentioned in said question, put up in said township, I think I would likely have seen it.

Answer to 2d question by complainant. Capt. John Beard's and Joshua Nance's, I think were the most public places in said township. William Saunders was, I believe, Justice of the Peace at said time, and frequently visited.

Answer to 3d question by complainant. I know of nothing more.

ROBERT CLEMENS.

Sworn to and subscribed before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

In the County last aforesaid also, appeared before me John Beard, a witness in the cause aforesaid, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did, upon his oath aforesaid, depose as follows, in answer to the questions propounded to him in said cause.

Answer to 1st question by complainant. I am acquainted the defendants, and have known them some five years.

Answer to 2d question by complainant. I was living in Bayou Township in said County, at said time.

Answer to 3d question by complainant. There was none at my residence, but I think I saw one such notices posted up on a tree near by.

Answer to 4th question by complainant. My house and Mr. Saunders' blacksmith's shop.

Answer to 5th question by complainant. Nothing.

JOHN BEARD.

Sworn to and subscribed before me, this 25th day of December, A. D. 1848.

D. W. LOWE,
Commissioner.

In said County, also, appeared Samuel Beard, a witness in said cause, and being by me first sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did, upon his oath aforesaid, depose as follows, to wit:

Answer to 1st question by complainant. I was a resident of said township and county at said time, and I do not recollect that I ever saw any; and if there had been any, I do not know that I should have noticed it.

Answer to 2d question by complainant. Captain John Beard's and Mr. Saunders's blacksmith's shop.

Answer to 3d question by complainant. Nothing.

SAMUEL M. BEARD.

Subscribed and sworn to before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

In the county aforesaid, also, appeared before me Joshua Nance, a witness in the aforesaid cause, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, did, upon his said oath, depose as follows, in answer to the questions propounded to him.

Answer to 1st question by complainant. I was a citizen of said township and county in the spring of 1846, and there was no such notice, as mentioned in said question, posted up at my residence, or at any of the houses and buildings about my premises; and I think there was no such notice posted up at any of the residences in Bayou Township, or public places, for I never saw any such, and if there had been I think I would have seen it, as I am in the habit of taking notice of all such advertisements.

Answer to 2d question by complainant. Capt. John Beard's is the most public place.

Answer to 3d question by complainant. Nothing more that would be beneficial to either.

JOSHUA NANCE.

Sworn to and subscribed before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

In said county also appeared before me, Thomas S. Chadwick, a witness in the above suit, and being by me first sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did, upon his said oath, depose as follows, in answer to the questions propounded to him in said cause.

Answer to 1st question by complainant. I am and was a citizen of said township and county in the spring of 1846, and there was no such notice posted up in said year at my residence or on my premises, and I think there was none posted up at any of the residences or public places in said township in said year; for if there had been, I think I should have seen some one, and I saw none.

Answer to 2d question by complainant. Capt. John Beard's and David W. Stringer.

Answer to 3d question by complainant. I frequently see all the public places, and most, if not all, the other residences in the township, and I think if there had been three such notices posted up, as mentioned in said question, I would have seen some of them.

THOS. S. CHADWICK.

Sworn to and subscribed before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

In the county last aforesaid also appeared Albert H. Ringo, a witness in the foregoing cause, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did, upon his said oath, depose as follows, in answer to the questions propounded to him to answer.

Answer to 1st question by complainant. In the month of April, 1847, I, as the agent of Francis Surget, the complainant, called on William Byers, the defendant, and requested him to relinquish any and all claims which he may have had of, in, and to any and all lands, which had been struck off to him at a sheriff's sale, in said County of Jackson, held on the 18th day of May, 1846, by John H. T. Webb, as sheriff, of lands belonging to complainant, offering, at at the same time, to pay and refund him all costs and expenses which he had been at in regard to said sale, and the execution of the deed from the sheriff to him, together with what he might demand for his trouble in attending to said sale, and making such relinquishment to complainant. Mr. Byers refused to make such relinquishment. I then inquired whether H. F. Fairchild, as the agent of complainant, had tendered him fifty dollars, and requested him to relinquish and convey all claim which he had, of, in, and to the lands so sold, as above stated to him, to complainant; and he told me he had offered to do so, and said he had the money, &c., to pay over at the time;

but he, Mr. Byers, told him he need not count out the money as he would waive a formal tender. I told him if Mr. Fairchild had not made the tender, I would, as agent of Surget, tender him fifty dollars, and demand therefor the relinquishment and conveyance of said lands to Surget. He told me it was unnecessary to make any formal tender, the he would not take the money; I then told him I had two hundred and fifty dollars, which I was ready and desirous of paying over to him, provided he would convey the title which he might have obtained by virtue of the purchase and sale aforesaid to complainant. He answered that he would not accept it, and utterly refused to make any agreement upon any terms to convey his title as aforesaid to the complainant.

Answer to 2d question by complainant. I know of nothing more.

A. H. RINGO.

Sworn to and subscribed before me, this 25th day of December, 1848.

D. W. LOWE,
Commissioner.

In the County last aforesaid, also appeared before me William Saunders, a witness in said cause, and being by me first duly sworn upon the Holy Evangelists of Almighty God, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said cause, did upon his said oath depose as follows, in answer to the questions propounded to him to answer.

Answer to 1st question by complainant. I am and was a citizen of said township and county at said time. I cannot say whether there was any such notice as the one mentioned in said question posted up at my residence, or on my premises, in the spring of 1846, or not; advertisements were frequently put at my residence, but I cannot state positively that one of the kind mentioned was put up or not, and I do not know whether any such was put up in any place in the township; I did not, that I recollect, take notice of any such, although it is possible some one or more may have been put up in the township.

Answer to 2d question by complainant. Capt. John Beard's and mine; I kept a blacksmith's shop at the time.

Answer to 3d question by complainant. Mr. Joshua Nance and Thos. S. Chadwick lived, in the spring of 1846, and months of April and May, in the north end of the township above named; Capt. John Beard and myself near the centre, or midway from the north end to the south end of said township, and Samuel Beard in the south end, and Geo. M. Bartly in rather the southwest.

WM. SANDERS.

Sworn to and subscribed before me, this 26th day of December, 1848.

D. W. LOWE,
Commissioner.

Filed 22d April, 1853.

WM. FIELD,
Clerk.

United States of America, District of Arkansas.

In the Circuit Court of the United States, for the District of Arkansas, at the April Term, 1848, to wit: on the 9th day of May, 1848.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } On Bill.

At this day came the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered that each party have, and leave is hereby granted them until the first day of January next to take depositions of witnesses generally, before any Judge or Justice of the Peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it is further ordered, that this case be and the same is hereby set for final hearing, at the next term of this Court, upon bill, answers, replications, exhibits, and testimony to be taken in this behalf, until which time this cause is hereby continued.

A true copy from the record.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

In the Circuit Court of the United States in and for the State and District of Arkansas.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and A. J. DOUGHERTY, Defendants. } In Chancery.

To the Honorable Benjamin Johnson, United States District Judge, in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court, in and for the State and District aforesaid.

Your petitioner, Francis Surget, the complainant in the above entitled suit, respectfully represents and shows to your Honor that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause, and that to establish the matters in issue in said cause, it is material to him to take the testimony of witnesses to be read on the trial of said cause, at Batesville, in the County of Independence, also in Jackson and Phillips Counties,

in the State of Arkansas, and in Smith County, in the State of Texas. For which purpose he desires the appointment of such commissioners as shall be necessary and proper, and respectfully suggests to your Honor that David W. Lowe is a competent and suitable person to take such testimony in the Counties of Independence and Jackson; Albert G. Underwood in the County of Phillips; and in the State of Texas, the Clerk of the Circuit Court in and for Smith County, in the State of Texas; and he will ever pray, &c.

FRANCIS SURGET,
Complainant.
By RINGO & TRAPNALL,
Solicitors.

State and District of Arkansas, *set.*

On hearing the above petition, and the application thereupon, made by said complainant, for the appointment of commissioners to take the testimony of witness, to be read as evidence on the trial of the case in said petition mentioned, ordered that David W. Lowe be, and he is hereby appointed commissioner to take such testimony in the County of Independence and Jackson, in the State of Arkansas, and that Albert G. Underwood be and he is hereby appointed commissioner to take such testimony in the County of Phillips, in said state, and that the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas, be and he is hereby appointed commissioner to take the testimony of any witness or witnesses in the State of Texas; and the Clerk of the United States Circuit Court in and for the State and District aforesaid, will issue a commission to said persons respectively. Done in the vacation of said Court, in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge for the District of Arkansas.

A true copy from the record.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

United States of America, District of Arkansas, *set.*

The President of the United States of America, to Albert G. Underwood, Commissioner, &c., greeting:

You are hereby commanded to cause to come before you all witnesses whatever, and them diligently examine on the annexed interrogatories, as well on the part of complainant as of said defendants, in a certain suit now pending in our said Circuit Court, on the Chancery side thereof, in which Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants; and that you then and there examine them apart upon their respective

corporeal oaths first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing; and when you shall have so taken them, that you send the same with this dedimus closed up under your seal to our said Circuit Court at the City of Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, has caused the seal of said Circuit [SEAL.] Court to be hereunto affixed, this 16th day of December, A. D. 1848, and the 73d year of American Independence.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

FRANCIS SURGET, Complainant,
v.
WM. BYERS & A. J. DOUGHERTY, Defendants. } In Chancery.

Interrogatories to be administered to William H. Ringo, a witness for said complainant.

Interrogatory 1st, by complainant. Did you or not, as agent for Francis Surget, the complainant, ever pay or cause to be paid the costs due in the case of William B. Duncan & Co. v. N. Marsh, brought or pending in the Jackson County Circuit Court? If yea, when and about what time, and to whom did you pay them?

Interrogatory 2d, by complainant. Do you or not know of any other circumstance or facts, matter or things, which may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set them forth in your answer?

FRANCIS SURGET,
Complainant.
By WM. H. & A. H. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 2d October, 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

District of Arkansas, *set.*

I, William Field, Clerk of the Circuit Court of the United States in and for the District of Arkansas, do hereby certify that the foregoing interrogatories, numbered 1 and 2, are truly copied from the originals now on file in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Circuit Court, this 16th day of December, A. D. 1848, and the 73d year of American Independence.

[L. S.]

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

(Indorsed.) The execution of the within commission will fully appear by reference to the annexed sheets and depositions therein contained. Witness my hand and seal as commissioner, this 28th December, 1848.

A. G. UNDERWOOD,
Commissioner.

Depositions of witnesses taken and subscribed before me, Albert G. Underwood, Commissioner, duly appointed and commissioned by the United States Circuit Court, as will fully appear by reference to the commission hereto attached, on this 28th day of December, A. D. 1848, at my office in the Town of Helena, and State of Arkansas, between the hours of 7 o'clock A. M., and 6 o'clock P. M., on said day, in pursuance to the commission and interrogatories hereto annexed, and to be read as evidence in a certain cause now depending in the Circuit Court of the United States in and for the District of Arkansas, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, on the part of the complainant, and on interrogatories to said commission attached.

William H. Ringo, a witness known to me to be of lawful age, and being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in the suit aforesaid, did then and there depose as follows, to wit:

To the first interrogatory to him propounded: that some time during fall of 1846 or spring of 1847, I do not now recollect which, I learned that the lands, or a considerable portion of the lands belonging to Francis Surget, and lying in Jackson County, in the State of Arkansas, had been sold under execution in the case of Wm. B. Duncan & Co. v. Noadiah Marsh. I immediately wrote to the Clerk to know the circumstances attending the sale, for what amount was the judgment, and also the nature and character of the suit for which judgment had been rendered against Francis Surget and others party plaintiffs in the suit. The Clerk of the Circuit Court of Jackson County then wrote me the particulars about the suit, so far as the records showed; and also as I requested the amount of the costs yet remaining unpaid on the judgment, which amount I, as the agent of Mr. Francis Surget, immediately remitted and caused to be deposited with the Clerk of Jackson County Circuit Court, and took his re-

ceipt for the same, which receipt I forwarded to Francis Surget, at Natchez, Miss. The exact time the money was placed in the hands of the Clerk I do not now recollect, but believe it was some time in March or April, 1847; at any rate, it was soon after I learned there was costs remaining due from the plaintiffs in said suit, together with the amount. The amount of costs that I paid to the Clerk was according to the statement furnished me by the Clerk of said Court as being unpaid, and was about the sum of thirty dollars, the exact amount not now recollected; this was done as soon as I could after I ascertaining the amount due on the judgment.

To the second interrogatory propounded to the witness, he answers and says, that the only circumstance or other facts that he can state, that would be of any benefit or advantage to either party is only "that he examined the execution under which the lands of Mr. Surget were sold, and that was issued for the costs of the suit in the case of W. B. Duncan & Co. v. Noadiah Marsh, and believes that it is drawn up in the handwriting of Mr. Byers, the defendant in this suit, though of this fact he would not be positive, as he has only seen the handwriting of Mr. Byers two or three times, and compared at the time he (wit.) saw the execution, the handwriting of the execution with some he was told was the handwriting of Mr. Byers; and from these circumstances alone he was induced to believe the execution was in Mr. Byers' handwriting. That the complainant is a non-resident of the State of Arkansas, as well also as the rest of the plaintiffs in said suit v. N. Marsh, and were at the time of the rendition of said judgment. That two of said plaintiffs, to wit, John Ker and Francis Surget, had no agent or attorney in the State of Arkansas then living but him the said William H. Ringo and his brother A. H. Ringo, and that he, the said witness, nor his brother, A. H. Ringo, had no knowledge of the existence of any judgment of any kind against said Surget or Ker, or either of them, at the time of the issuing of the execution under which the complainant's lands were sold. That he, the said witness, in the fall of 1845, visited Jackson County, and there made an arrangement with the then Sheriff (J. H. T. Webb, the same one who levied on and sold Mr. Surget's lands) by which he, the said Sheriff, was to have notified and apprised him, the said witness, as the agent of the complainant, of any trespassing or injuries that were or should thereafter arise or transpire, by which the lands of Mr. John Ker or the said complainant would be injured, or their rights jeopardized in any manner, or any other person's lands lying in Jackson County, for whom he (wit.) was agent, and paid the taxes on. That the said Sheriff must have known at the time he levied the execution on said lands that he (witness) was the agent for said Surget, the complainant in this cause, and according to his promises should have informed him (wit.) that he had the execution against said complainant, which said Webb failed to do. And further this deponent sayeth not.

W. H. RINGO.

Sworn to and subscribed before me, this 28th day of December, A. D. 1848.

A. G. UNDERWOOD,
Commissioner.

State of Arkansas, County of Phillips, *ss.*

I, Albert G. Underwood, duly appointed Commissioner, by the order and commission of the United States Circuit Court to me issued, and hereto annexed, to take the testimony of witnesses in Phillips County aforesaid, in the case in the caption mentioned, do hereby certify that the foregoing deposition of William H. Ringo, the witness in said commission or interrogatories mentioned, was taken before me on this 28th day of December, A. D. 1848, at the place and time in the caption hereof mentioned, that the examinations, responses, and statements of said witness were reduced to writing in my presence, and by the said witness sworn to and subscribed in my presence at the time and place aforesaid, and that said deponent is a resident of the County of Phillips, in the State of Arkansas.

In testimony whereof, I, Albert G. Underwood, Commissioner as aforesaid, do hereunto set my hand and seal, at my office, in the Town of Helena, County of Phillips, and State of Arkansas, this 28th day of December, A. D. 1848.

A. G. UNDERWOOD,
Commissioner.

Commissioner's fee, $2 00.
Repay of William H. Ringo, Esq.
Attest, A. G. UNDERWOOD,
Commissioner.

Filed 22d April, 1853.

WM. FIELD,
Clerk.

United States of America, District of Arkansas.

In the Circuit Court of the United States for the District of Arkansas, on the ninth day of May, 1848, at the April Term of said Court, A. D. 1848.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and ANDREW J. DOUGHERTY, Defts. } On Bill.

At this day come the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have, and leave is hereby granted them, until the first day of January next, to take the depositions of witnesses generally, before any Judge or Justice of the Peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it is further ordered, that this case be and the same is hereby set for final hearing at the next term of this Court, upon bill, answers, replications, exhibits, and testimony, to be taken in this behalf, until which time this case is hereby continued.

A true copy from the record.

Attest, WM. FIELD, Clerk.
By JOHN T. TRIGG, Deputy Clerk.

And afterwards, to wit, on the 17th day of April, A. D. 1849, the following order was had in said cause, to wit:

This day came said complainant, by his solicitors, and the said defendants also came by their solicitor, and thereupon, on motion of said complainant, and by consent of parties, it is ordered that the time for taking depositions in this case be and the same is hereby enlarged and extended to the first day of October next.

A true copy from the record.

Attest, WM. FIELD, Clerk.
By JOHN T. TRIGG, Deputy Clerk.

And afterwards, to wit, on the 12th November, 1848, the following proceeding was had in said cause, before the Hon. B. Johnson, Judge, &c., at his chambers, to wit:

United States of America, District of Arkansas.

In the Circuit Court of the United States, in and for the State and District of Arkansas.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and ANDREW J. DOUGHERTY, Defts. } In Chancery.

To the Honorable Benjamin Johnson, United States District Judge in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court in and for the State and District aforesaid.

Your petitioner, Francis Surget, complainant in the above-entitled suit, respectfully represents and shows to your Honor, that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause, and that to establish the matters in issue in said cause, it is material to him to take the testimony of witnesses, to be read on the *the* trial of said cause, at Batesville, in the County of Independence, also in Jackson and Phillips Counties, in the State of Arkansas, and in Smith County in the State of Texas;

for which purpose he desires the appointment of such commissioners as shall be necessary and proper; and respectfully suggests to your Honor, that David W. Lowe is a competent and suitable person to take such testimony in the Counties of Independence and Jackson; Albert G. Underwood in the County of Phillips; and in the State of Texas the Clerk of the Circuit Court in and for Smith County, in the State of Texas. And he will ever pray, &c.

FRANCIS SURGET,
Complainant.
By RINGO & TRAPNALL,
Solicitors.

State and District of Arkansas, *sct.*

On hearing the above petition, and the application thereupon made by said complainant, for the appointment of commissioners to take the testimony of witnesses, to be read as evidence on the trial of the cause in said petition mentioned; ordered, that David W. Lowe be, and he is hereby appointed commissioner to take such testimony in the Counties of Independence and Jackson, in the State of Arkansas; and that Albert G. Underwood be, and he is hereby appointed commissioner to take such testimony in the County of Phillips, in said State, and that the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas; and the Clerk of the United States Circuit Court, in and for the State and District aforesaid, will issue a commission to said persons respectively. Done in the vacation of said Court, in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge for the District of Arkansas.

Truly copied from the original petition and order as entered of record.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG.
Deputy Clerk.

United States of America, District of Arkansas.

The President of the United States of America, to David W. Lowe, Commissioner, &c., greeting:

You are hereby required to cause to come before you all witnesses whatever, and them diligently examine, on the annexed interrogatories on the part of the complainant, as well as of the defendants, in a suit now depending in our said Circuit Court, sitting as a Court of Chancery, in which Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants; and that you then and there examine them apart upon their respective corporeal oaths, first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing; and when you shall have so

taken them, that you send the same with this dedimus closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, has caused the seal of said Circuit Court to be hereunto affixed this 11th day of May, A. D. 1849, and the 73d year of American Independence.

[SEAL.]

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

United States of America, District of Arkansas.

In the United States Circuit Court, on the Chancery side thereof.

Interrogatories.

Interrogatories to be propounded to witnesses in the case of Francis Surget, complainant, and William Byers and Andrew J. Dougherty, defendants, now pending in said Court.

Interrogatory 1st, to John H. T. Webb, a witness for said complainant.

Do you know the complainant and defendants in the above suit? How long have you known them, or either of them?

Interrogatory 2d, by complainant. Were you, or not, acting as Sheriff of Jackson County, in the State of Arkansas, in the winter and spring 1846? If yea, were you personally present and officially acting at the time a levy and sale was made by the Sheriff of said County, yourself, or some other person, of the following lands, levied on and sold as the property of Francis Surget, William B. Duncan, Stephen Duncan, and John Ker, or as the property of some, or one of them, viz.: fract. sec. 18, E. ½ of Sec. 2, S. W. ¼ Sec. 4, N. W. ¼ S. ½ and W. ½ of N. E. ¼ of Sec. 5, Sec. 8 S. E. ¼, N. W. ¼ and W. ½ of N. E. ¼ Sec. 9, S. ½ Sec. 10, N. ½ and S. W. ¼ Sec. 15, Sec. 17, Sec. 22, Sec. 18, Sec. 19, and Sec. 30, all in Township 8 north, of Range three (3) west; also Sec. 8, Sec. 20, Sec. 34, Sec. 30, and Sec. 36, all in Township seven (7) north, of Range three (3) west; also Sec. 4, Sec. 7, and Sec. 9, in Township No. 12 north, of Range No. 2 west; and also Sec. No. 10, and Sec. No. 15, in Township No. 12 north, of Range No. 3 west; also the S. W. ¼ of Sec. 9, and S. E. ¼ of Sec. 15, in Township No. 8 north, of Range No. 3 west, and containing in all about 14,258 60-100 acres of land, according to the public surveys of the United States? If yea, state all the facts and circumstances attending such levy and sale, and to whom said lands were struck off.

Interrogatory 3d, by complainant. State, if you recollect, at whose suit, and under what process the above lands were levied and sold? What was the aggregate of the judgment as indorsed on the process, under which the sales of said lands were made?

Interrogatory 4th, by complainant. How was it that so much property was levied and sold to satisfy a debt of some thirty-five or forty dollars?

Interrogatory 5th, by complainant. Was, or was not, the execution under which the lands numbered in the 2d interrogatory by complainant were sold, levied on all of said lands at your own option or choice? If not, at whose instance, and by or under whose directions or orders was the levy on so much property made?

Interrogatory 6th, by complainant. From whom did you receive the execution and lists of lands on which you made the levy spoken of in the 2d interrogatory by the complainant?

Interrogatory 7th, by complainant. State whether or not Haggard, the Clerk, at the time the execution under which you sold the lands spoken of in the 2d interrogatory was issued, is still living. If not, when did he die?

Interrogatory 8th, by complainant. State, if you can, what Mr. Haggard, from whom you received the execution and the list of lands, said at the time he handed you the execution and advertisement relative to the lands and levy. Also what instructions he gave you from the defendant Byers.

Interrogatory 9th, by complainant. If you know, please state in whose handwriting the list of lands or advertisements handed you by Mr. Haggard was in? And also, in whose handwrite the execution was drawn in?

Interrogatory 10th, by complainant. State, as near as you can recollect, all that Mr. Byers said at the conversations you held with him on the day you sold said lands mentioned in interrogatory 2d? Also, under whose orders you acted in making said sale? Would any sale have been made on that day under said execution and levy without such directions from some person claiming the control of said execution?

Interrogatory 11th, by complainant. Was or was not the Circuit Court of Jackson County, and State of Arkansas, in session on the day and at the time you sold said lands mentioned in the 2d interrogatory? If not, was it, or not, generally known or believed that the Judge of said Circuit Court was absent from home and would not be back to hold the courts during the spring term of 1846?

Interrogatory 12th, by complainant. Was it, or not, the usual custom to suspend or postpone all sales of real estate under executions in your County, when the Circuit Court was not in session? If yea, did you, or not, suspend selling under all other executions in your hands on the day you sold the lands mentioned in the 2d interrogatory above? If yea, by whose consent or orders?

Interrogatory 13th, by complainant. Without positive instructions so to do, from some person you supposed clothed with authority, would you have levied on as much land as 14,258 60-100 acres, to satisfy an execution of some $35 or $40?

Interrogatory 14th, by complainant. Are you, or not, well ac-

quainted with all or nearly all of the lands lying in Jackson County, owned by the complainant at present, as well as at the time you levied the execution above spoken of, on the 14,258 60-100 acres? If yea, what was the value of the entire 14,258 60-100 acres sold by you, as above stated to the defendants, Byers and Dougherty, at the time of said sale? And out of the lands so sold, and also of the other lands belonging to said complainant, in Jackson County, is there, or not, many tracts of 40 or 80 acres of land worth as much or more than the amount due on the execution under which you made said levy and sale?

Interrogatory 15th, by complainant. Was it, or not, the general belief of the citizens of your County, as expressed and well understood, as well as your own opinion, that a sale of real estate, at a time when no Court was sitting, was unauthorized, void, and of no effect? If yea, were you not asked by sundry persons at the time of the sale of the above lands what you thought about the validity of the sale? If yea, what did you tell them?

Interrogatory 16th, by complainant. Was or was not the form of notice or advertisement of the sale of the lands levied on by you, as above spoken of, drawn up by yourself, or furnished you? And if furnished you, by whom? And in whose handwriting was it?

Interrogatory 17th, by complainant. How many Townships were there in Jackson County, in 1846, legally established by the County Court?

Interrogatory 18th, by complainant. Did you, or not, post up in three of the most public places in each Township in Jackson County, a notice or advertisement, containing a list of the lands so levied on, as above stated, together with the time and place of sale, and as whose property the same was taken in execution, twenty days before the day of sale?

Interrogatory 19th, by complainant. If you had not been instructed to make a levy on all the lands so sold by you to the defendants, Byers and Dougherty, by virtue of the execution, as above stated by you, how much land would you have levied on to satisfy said execution?

Interrogatory 20th, by complainant. On the day you sold said lands please state whether or not, at the request of William Byers, you went round town and proclaimed that you were then going to sell or offer for sale Surget's lands, or the like? And whether, on that day, you would have sold said lands, when no Court was sitting, but for the positive orders of the defendant Byers, who assumed to act as attorney for the defendant in the execution under which said sale was made, to make the sale?

Interrogatory 21st, by complainant. Do you, or not, know any other fact or circumstance that will be of any benefit to either party in this cause? If yea, please state them.

Interrogatories to be propounded to William C. Bevens, a witness in the above cause.

Interrogatory 1st, by complainant. Are you or not acquainted with the parties to this suit, or either of them, and how long have you known them?

Interrogatory 2d, by complainant. Do you or not know of a sale of a very large body or quantity of lands, as the property of said complainant, or of him and others, in Jackson County, Arkansas, which were sold by the late sheriff, John H. T. Webb, of said Jackson County, at the spring term of said Jackson County Circuit Court, for the year A. D. 1846? If yea, please state at whose suit they were sold; under whose orders, and at whose instance, were said lands levied and sold? If you know, also state who become the purchasers at said sale.

Interrogatory 3d, by complainant. You will please state all the circumstances and facts that you know touching or concerning the sale spoken of in the last preceding interrogatory? All the conversation, if any, that you had, relative to said sale, with the said sheriff and the defendant, William Byers, or either of them, on the day of sale, or at any time previous thereto?

Interrogatory 4th, by complainant. You will please state, as near as possible, what the defendant, Byers, said, on the day of sale, relative to the sales under executions on that day? His manner at the time you talked about said sales, and the impression his language and manner conveyed to your mind on the occasion?

Interrogatory 5th, by complainant. Were you or not present at the time of such sale? If yea, please state where it was held? how many persons, as near as you can, and who were present at the sale? What sort of weather was it during the day of sale?

Interrogatory 6th, by complainant. Are you a practising attorney in the State of Arkansas? And if yea, are you the habit of attending the Circuit Courts of Jackson County? If yea, please state whether or not it was not, anterior to the passage of the Act of General Assembly of the State of Arkansas, approved on the 21st day of December, A. D. 1846, regulating the sale of real estate under execution, the common usage or practice for the sheriffs of the different counties to suspend or postpone the sales of real estate, unless the Circuit Court should at the time of sale be open? If yea, what was the course pursued by the sheriff of Jackson County on the day of the sale of the lands belonging to the complainant, in regard to all other sales advertised for that day by him?

Interrogatory 7th, by complainant. Was it not the general belief of both the members of the legal profession and the citizens of the community generally, that a sale of real estate, under execution, was unauthorized and void unless the Circuit Court was in session at the time of the sale? If yea, please state whether the Circuit Court of

Jackson County was open at the time of the sale of the said complainant's lands as spoken of above?

Interrogatory 8th, by complainant. Was it not most generally known to the citizens of the different counties composing the judicial circuit in which Jackson County is situate, as well also as to the people of Jackson County, and to the members of the bar in the Circuit Court, that the Judge of that circuit was absent from home, during the time appointed by law for the courts in that circuit or district, in the spring of 1846, and would not be back to hold the courts therein at the time prescribed by law? If yea, was it not so known to Mr. Byers, the defendant in this suit?

Interrogatory 9th, by complainant. Do you or not know at what time William F. Denton, late of Batesville, died? If yea, please state when, and if his death was not known to Mr. Byers some time previous to the time fixed by law for holding the Circuit Court of Jackson County in the spring of 1846?

Interrogatory 10th, by complainant. Was or not C. F. M. Noland, Esq., in the habit, for many years past, of attending the Jackson County Circuit Court? If nay, did not William Byers, the defendant, know the fact long before, and at the time of said sale? And did not the defendant, Byers, know that Mr. Noland was not, nor would be there at the time of said sale?

Interrogatory 11th, by complainant. Is the defendant, William Byers, a practising attorney in the State of Arkansas? If yea, is he not in the habit of attending the courts in the 3d Judicial Circuit, in and for the State of Arkansas? If yea, how long has he been attending the courts in said circuit?

Interrogatory 12th. Did John H. T. Webb, then Sheriff of Jackson County aforesaid, on the day on which he sold the lands aforesaid, and previous to the sale of them, at the request of William Byers, or otherwise, go around the town and proclaim, or give public notice of the fact, that he would then sell said lands?

Interrogatory 13, by complainant. Do you or not know of any other fact or circumstance that will be of any advantage to either party in this suit? If yea, please state them.

Interrogatories to be propounded to James Robinson, a witness in behalf of Francis Surget, the complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted with the parties to the above suit, or either of them, and how long have you known them?

Interrogatory 2d, by complainant. Were you, or not, ever sheriff of Jackson County, in the State of Arkansas? If yea, how long, and when did you act as sheriff?

Interrogatory 3d, by complainant. While you were acting as sheriff of Jackson County, what was the practice relative to the sale of lands levied on by virtue of executions, when the Circuit Court failed

to be held or opened, on the first day of the term prescribed by law, the day appointed for the day of such sales?

Interrogatory 4th, by complainant. Was it, or not, generally known or understood by the citizens of Jackson County, that real estate would not be sold, unless the Circuit Court was open at the time, and on the day of such sales? If yea, why were the sales suspended, or postponed, unless the Circuit Court was in session?

Interrogatory 5th, by complainant. Was it, or not, the opinion or general belief of the citizens of Jackson County, as well as of those of other sections of the State, that a sale of real estate under an execution was null and void, unless the Circuit Court was open at the time of sale?

Interrogatory 6th, by complainant. Were you, or not, present at a sale held by the late sheriff (John H. T. Webb) of Jackson County, in the spring of 1846, which a large quantity of lands, owned by Francis Surget, the complainant, or by him and others, were sold? If yea, please state, if you know, to whom they struck off? How many persons were present at such sale? Who were present at said sale, and who bid, if any body but the defendants in this suit, and if any bids, the amount bid?

Interrogatory 7th, by complainant. Are you not well acquainted with all, or nearly all, the lands owned and taxed, or that were owned and taxed to Francis Surget and John Ker, in Jackson County, before, and up to May, 1846? If yea, please state, what you suppose the lands sold by the sheriff, in the spring of 1846, being in all some 14,000 acres or more, as the complainant's, to be worth?

Interrogatory 8th, by complainant. Out of the lands belonging to the complainant and John Ker, in the spring of 1846, lying in Jackson County, are there not many 40 and 80 acre tracts, which were known to the Sheriff Webb, as their lands, worth much more than some thirty-five or forty dollars?

Interrogatory 9th, by complainant. Are you, or not, generally in the habit of noticing the advertisements posted up by the sheriffs and other persons, of the sales of lands and other property? If yea, did you, or not, ever see a notice of the sale of Surget's lands by Sheriff Webb posted up at any place in Jackson County during the spring of 1846? and if there had been as many as three stuck up in each township in the county, would you not have been very apt to have seen some of them?

Interrogatory 10th, by complainant. Had you believed at the time of the sale of the lands above spoken of, that the sale under the circumstances was, or had been, legal and good in law, would you not have bid for some of the lands sold much more than they were struck off to the defendants, Byers and Dougherty, at?

Interrogatory 11th, by complainant. Were any of the costs in the case of William B. Duncan & Co. v. Noadiah Marsh, and by virtue of which the lands spoken of above were sold, due, and owing to you as late sheriff? If yea, please state if you were at the time of issu-

ing the execution under which said sale was made, or at any time long previous, demanding the amount of the defendant, Noadiah Marsh?

Interrogatory 12th, by complainant. Was it not generally known by the citizens of Jackson County, that the Judge who presided in third Judicial Circuit, in the State of Arkansas, was absent from his Circuit, during the spring of 1846, and would not be back to hold the Courts in the different counties that spring?

Interrogatory 13th, by complainant. Please state whether or not, the sheriff (Webb) on the day he sold the lands spoken of, belonging to Francis Surget, the complainant, came to you and asked you your opinion about the propriety of his selling those lands on that day, as there was no Court open? And if yea, please state what you told him.

Interrogatory 14th, by complainant. How many persons were there present at the time of the sale of the complainant's lands spoken of above, as having been held in the spring of 1846?

Interrogatory 15th, by complainant. Do you know of any other fact or circumstance that will be of any advantage to either party in this suit, at the final hearing thereof? If yea, please state them.

Interrogatories to be propounded to Phideas Crow, a witness in behalf of the complainant in the above-mentioned suit:

Interrogatory 1st, by complainant. Are you acquainted with the parties to this suit, or either of them? And if yea, how long have you known them?

Interrogatory 2d, by complainant. Were you or not present at the time of the sale by the late sheriff (J. H. T. Webb) of Jackson County, of a large quantity of lands, lying in said county, belonging to the complainant, Francis Surget, or to him and others, and which were levied on and sold by virtue of an execution in favor of one Noadiah Marsh, for his costs in a suit instituted in the Circuit Court of said county, in the name of William B. Duncan & Co. v. Noadiah Marsh? If yea, state how many persons were present at said sale, and what persons were there present; whether or not the Circuit Court of Jackson County was in session at the time of said sale, and when the sale took place?

Interrogatory 3d, by complainant. Have you or not ever seen the execution under and by virtue of which said lands, spoken of by you above, were levied on and sold? If yea, state in whose handwrite the execution is written?

Interrogatory 4th, by complainant. What was the belief or general opinion relative to the validity of said sale so held by Sheriff Webb, no Court being open as above stated?

Interrogatory 5th, by complainant. Are you Clerk now, or were you previous hereto, Clerk of the Jackson County Circuit Court? and if yea, what time was it that the said complainant, by and through

his agent, W. H. Ringo, deposited with you as clerk the balance of the costs purporting to be due on the execution or judgment under which the said complainant's lands were sold?

Interrogatory 6th, by complainant. Do you know of any other *other* fact or circumstance that will be of any advantage to either party in this suit? If yea, please state them.

Interrogatories to be propounded to James J. Waddle, a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Are you or not a citizen of Jackson County, and State of Arkansas? If yea, please state whether you were not in the habit of *w*riding through the country considerable during the spring of 1846? If yea, please state whether or not you ever saw a notice or advertisement of a sale of large quantity of lands lying in said, levied on and taken in execution as the property of the complainant, or John Ker, Stephen Duncan, and William B. Duncan, by the late Sheriff Webb? If nay, would you or not have noticed or observed an advertisement containing a description of some 14,000 *thousand* acres of land, provided there had been as many as three put up in each township in said county?

Interrogatory 2d, by complainant. Are you acquainted with description, quantity, and location of the lands sold to defendants, Wm. Byers and A. J. Dougherty, by Sheriff Webb, as the property of the complainant, or of him and others, in the spring of the year 1846? If yea, please state what was the value of said lands.

Interrogatories to be propounded to John Robinson, a witness in behalf of the complainant in this cause.

Interrogatory 1st, by complainant. Were you in the habit of riding through the County of Jackson much during the spring of 1846? If yea, please state whether or not you were at the most public places in the several townships in said county, within 20 days preceding the May Term of the Circuit Court; and did you at any time or place see advertised by notices in writing a sale of lands belonging to the complainant, or John Ker, Stephen Duncan, and William B. Duncan, or either of them, as taken and levied on by the late sheriff (Webb), by virtue of an execution to him directed? If yea, state when and where? If nay, state whether or not you would most probably have observed such a notice, if there had been as many as three posted up at three of the most public places in each township in Jackson County.

Interrogatory 2d, by complainant. Were you in Elizabeth, Jackson County, on the day of the sale of the lands referred to in the first interrogatory? If yea, please state the then number of habitations in said town, public houses, &c., and their distance from the court-house; and whether or not you heard of the sale of said lands be-

fore the sale was over; and whether if a legal notice or proclamation of such sale had been made such sale could have taken place without your knowledge.

Interrogatories to be propounded to William H. Morris, a witness in behalf of the complainant in this suit.

Interrogatory 1st, by complainant. Do you or not know the parties to the above suit? If yea, please state how long you have known them.

Interrogatory 2d, by complainant. Are you a resident of the Town of Elizabeth, the county seat of Jackson County, and State of Arkansas? If yea, how long have you resided there, and what is your occupation?

Interrogatory 3d, by complainant. Were you in Elizabeth on the day of the sale of certain lands, sold as the property of Francis Surget, on the 18th day of May, 1846, by the late Sheriff (Webb) of Jackson County? If yea, please state whether or not you were present at said sale, and whether or not you ever knew anything of said sale taking place until it was all over.

Interrogatory 4th, by complainant. If there had been posted up in the County of Jackson, as many as three advertisements or notices of the sale of as large an amount of lands as 14,000 *thousand* acres, describing them by metes and bounds, posted up 20 days before the day of sale, in three of the most public places in each township of Jackson County, would you have noticed or observed them, or some of them?

Interrogatory 5th, by complainant. Did you, or not, ever pay any costs in a certain suit instituted in the Circuit Court of Jackson County, wherein William B. Duncan, Stephen Duncan, John Ker, and Francis Surget, under the style of Wm. B. Duncan & Co., were plaintiffs, and Noadiah Marsh was defendant? If yea, please state to whom, and the amount of costs you paid to each, and for whom did you pay them?

Interrogatory 6th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party in this cause? If yea, please state them.

Interrogatories to be propounded to Noadiah Marsh, a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Please state whether or not you ever directed an execution to issue for your costs in a certain suit instituted by Wm. B. Duncan, in the name of John Ker, Stephen Duncan, Francis Surget, and William B. Duncan, in the name and style of Wm. B. Duncan & Co. as plaintiffs, against you as defendant, in the Jackson Circuit Court. Whether you knew of any execution having issued at any time previous to the Spring Term of the Jackson Circuit Court for the year 1846, for the costs? Whether you know of said execution having been levied on some 14,000 acres of the

lands belonging to the complainant in this suit, or to him and others, until some time after a levy and sale of said lands?

Interrogatories to be propounded to Charles F. M. Noland, Esq., a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted with the parties to this suit, or either of them? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you ever in partnership in the practice of the law with one William F. Denton, Esq., late of Batesville, Arkansas? If yea, when did your partnership cease or terminate? When did Wm. F. Denton depart this life? Were you, or not, ever interested as attorney in a certain suit, brought in the name of Wm. B. Duncan & Co. v. Noadiah Marsh, in the Jackson County Circuit Court? Were you not in the habit for some years past, of attending the Circuit Court in said Jackson County? If nay, how often have you been there for the last 608 years? and were you there at the spring term of said Court for the year A. D. 1846? Did, or did not, the defendant, Mr. Byers, know that you were not in the habit of attending said Court? If yea, did he, or not, know that you would not be there at the spring term in 1846?

Interrogatory 3d, by complainant. Was it not considered, and the general belief, that a sale of real estate under execution, held at a time when the Circuit Courts were not open, was unauthorized and illegal, anterior to the change of the law by the General Assembly of the State of Arkansas, at the session 1846, regulating sales of real estate under execution?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party in this suit, at the final hearing thereof? If yea, please state them.

Interrogatories to be propounded to Henry F. Fairchild, Esq., a witness for said complainant.

Interrogatory 1st, by complainant. Did you, or not, ever tender to the defendant Byers, for and in behalf of the complainant, fifty dollars, and request him to relinquish whatever right or title he may have in any manner acquired by virtue of a sale of the lands belonging to said complainant, in Jackson County, Arkansas, sold by the Sheriff, John H. T. Webb, in the spring of 1846? If yea, when and what did said Byers say at the time?

Interrogatories to be propounded to John Beard, a witness for the complainant in the above cause.

Interrogatory 1st, by complainant. Are you acquainted with the parties to the above suit, or either of them? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you living in the County of Jackson and State of Arkansas, during the months of April and May, in the year 1846? If yea, in what township?

Interrogatory 3d, by complainant. Was there, or not, a notice or advertisement of the sale of a large quantity of lands, levied on by virtue of an execution, by the late Sheriff, John H. T. Webb, posted up at your house, in the months of April or May, 1846, or at any other house in Bayou Township?

Interrogatory 4th, by complainant. What houses are, or were, in the spring of 1846, the most public places in Bayou Township, Jackson County, Arkansas?

Interrogatory 5th, by complainant. Do you know any other fact or circumstance that will be of any benefit to either party in the above suit? If yea, please state them.

Interrogatories to be propounded to Robert Clements, William Sanders, Joshua Nance, Thos. S. Schaddick, George W. Barkley, and Samuel Beard, witnesses for said complainant in the above suit.

Interrogatory 1st, by complainant. Are and were you citizens, and residing in Bayou Township, Jackson County, and State of Arkansas, during the spring of A. D. 1846? If yea, was there at any time during the months of April and May, posted up by John H. T. Webb, the then Sheriff of Jackson County, or any other person for him, at either of your houses, or shops, or any other of your buildings, a notice or advertisement in writing of the sale of a large quantity of lands, taken and levied by virtue of an execution as the property of William B. Duncan, John Ker, Stephen Duncan, and Francis Surget, or either of them? If nay, was there or not such a notice posted up at any other house or place in Bayou Township; and if there had been, would you have been likely to have seen it?

Interrogatory 2d, by complainant. Please state what places or houses were the most public and most frequently visited or resorted to, in Bayou Township, in the spring of 1846?

Interrogatory 3d, by complainant. Do you know any other fact or circumstance that can be of any benefit to either party in the above suit? If yea, state them.

Interrogatories to be propounded to Mrs. Roddy, widow of Major John Roddy, deceased, a witness in behalf of the complainant in the above suit.

Interrogatory 1st, by complainant. Were you residing in Jackson County, State of Arkansas, in the spring of 1846? If yea, was or was not your house where you then resided as well as now reside a place of very frequent resort by the citizens of said county? If yea, does it not stand in such a situation as to make it one of the most convenient places for persons passing to call in that portion of the country? If yea, state whether there was posted up at your house, during the months of April or May, in the year 1846, a notice in writing containing a description of a large quantity of lands, purporting to have

been taken in execution as Francis Surget's lands, and to be sold by the late Sheriff of said County, John H. T. Webb?

Interrogatory 2d, by complainant. Is it customary or not for the Sheriffs of Jackson County, when they have any notices to put up, to place one up at your house? If yea, how long has such been the custom?

Interrogatory 3d, by complainant. Do you *you* know of any other fact or circumstance that will be of any benefit to either party in this suit? If yea, please state them.

Interrogatories to be propounded to Saylors and Green Silvey, former Clerks of the Jackson County Circuit Court, witnesses for the complainant in the above suit.

Interrogatory 1st, by complainant. Have you or either of you, or had you, in the spring of 1846, any fees due and owing to you, which had accrued to you as Clerks of the Jackson Circuit Court, in the case of Wm. B. Duncan & Co. v. Noadiah Marsh? If yea, were you demanding the payment of them from said Marsh at any time previous to May, 1846? If yea, when did you make demand of said fees and costs so due you of said Marsh?

Interrogatory 2d, by complainant. Did you or either of you ever direct an execution or fee bill to issue against the plaintiffs or defendants in said suit, for the purpose of enforcing the payment of your costs? If yea, when and to whom was such request made?

Interrogatory 3d, by complainant. Did you or either of you ever know of an execution having been issued in said suit for the costs at any time previous to the levy and sale of a large quantity of lands belonging to Francis Surget, one of said plaintiffs? If yea, when did you acquire such knowledge of the issuing of said execution, levy, and sale?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party in the above suit? If yea, please state them.

Interrogatories to be propounded to A. W. Lyon, a witness for the complainant in the above suit.

Interrogatory 1st, by complainant. Are you acquainted with the parties to the above suit? If yea, how long have you known them?

Interrogatory 2d, by complainant. Were you ever subpœnaed and in attendance as a witness in a certain suit, instituted in the Jackson County Circuit Court, wherein Wm. B. Duncan & Co. were plaintiffs and Noadiah Marsh was defendant? If yea, did you ever prove up your fees as a witness? If yea, were you at any time anterior to April, 1846, demanding the payment of your fees from the defendant or any other person? If yea, at what time, and of whom? and if nay, did you or not ever order execution to issue against the plain-

tiffs in said suit, to collect your fees from said plaintiffs? and if nay, when did you first learn of the issuing of such an execution and sale under it of the plaintiff's lands?

Interrogatory 3d, by complainant. If you had been anxious for the payment of your fees in the foregoing case or very solicitous to have them paid, would you have ordered execution to issue, or have made a request and demand on the plaintiffs in the suit for them first?

Interrogatory 4th, by complainant. Do you know of any other fact or circumstance that will be of any benefit to either party to this suit at the final hearing thereof? If yea, please set them forth fully and at large in your answer?

The following interrogatory to be propounded to each and every one of the witnesses above-named, after all the interrogatories for each of said witnesses have been put to and answered by them respectively, viz.: Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

FRANCIS SURGET,
Complainant.
WM. H. & A. H. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 2d October, 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

United States of America, District of Arkansas.

In the U. S. Circuit Court, on the Chancery side thereof.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and ANDREW J. DOUGHERTY, Defendants.

Interrogatories to be administered to the following witnesses in behalf of the complainant.

Interrogatories to be propounded to Albert H. Ringo, a witness for complainant.

Interrogatory 1st, by complainant. State whether or not you, as agent for the complainant, ever called on the defendant, William Byers, and requested of him the relinquishment of whatever title or interest, if any he had, of, in, or to certain lands struck off to him at

a sheriff's sale in Jackson County, Arkansas, sold on the 18th of May, 1846, as the property of said complainant, on the payment or refunding the amount of money paid out by said Byers, with interest and costs? If yea, state when you called on him, the amount of money then tendered him by you, as agent aforesaid, the amount offered, and also what Mr. Byers said relative to the same?

Interrogatory 2d, by complainant. Do you know of any other fact or circumstances that can be of any benefit or advantage to either party at issue in this cause, or material to the subject of this your examination, or the matters in question in this cause? If yea, set them forth fully and at large in your answer.

Interrogatories to be administered to William H. Ringo, a witness for said complainant.

Interrogatory 1st, by complainant. Did you, or not, as agent of Francis Surget, the complainant, ever pay or cause to be paid, the costs in the case of Wm. B. Duncan & Co. v. N. Marsh, brought or pending in the Jackson County Circuit Court? If yea, when and about what time and to whom did you pay them?

Interrogatory 2d, by complainant. Do you, or not, know of any other circumstance or facts, matter or thing, which may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, on the matters in question in this cause? If yea, set them forth in your answer.

FRANCIS SURGET,
Complainant.
By WM. H. & A. H. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed October 2d, A. D. 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

United States of America, District of Arkansas, *set.*

I, William Field, Clerk of the Circuit Court of the United States, within and for the District of Arkansas, do hereby certify that the foregoing interrogatories, in the case therein stated, are truly copied from the originals now on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said Circuit Court, this 12th day of May, A. D. 1849, and the 73d year of American Independence. [L. S.]

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

Depositions of witnesses taken and subscribed before me, David W. Lowe, a Commissioner, duly appointed for that purpose, in pursuance of a Commission, and upon the interrogatories hereunto annexed, issued out of the Circuit Court of the United States for the District of Arkansas, on the Chancery side thereof, to be read as evidence in a certain cause depending in said Court, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, on the part of the complainant, taken and subscribed at the County of Jackson, in the State of Arkansas, on the 25th day of August, A. D. 1849.

James Robinson, a witness in this cause on the part of said complainant, who, being first duly sworn, deposes and says:

Answer to 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants in this suit, and have known them for ten or twelve years; but I have no personal acquaintance with the complainant.

Answer to 2d interrogatory. I have been sheriff of Jackson County, and acted as such a part of the year 1835, and in the years 1836 and 1837, and again from October, 1842, to about January, 1844.

Answer to 3d interrogatory. I know of no case of the kind occurring, while I was acting as sheriff, within my recollection.

Answer to 4th interrogatory. It was my understanding, and as far as I know, the understanding of others, that real estate would not be sold unless the Circuit Court was open at the time. I know of no case of sales being suspended or postponed on account of Court not being open within my recollection.

Answer to 5th interrogatory. It was the opinion of the citizens of Jackson County, as far as my knowledge extends, that a sale made under execution was null and void, unless the Circuit Court was open; as to the opinion of citizens of other parts of the State, I cannot state anything.

Answer to 6th interrogatory. I was present at the sale referred in this interrogatory, and the most of the lands that were sold, while I remained, were struck to William Byers, one of the said defendants; I cannot state the precise number present, but think there were from 15 to 25 present *present;* I cannot now recollect who the persons were who were present. I do not recollect who bid besides the defendants, nor do I recollect the amount bid.

Answer to 7th interrogatory. I was pretty well acquainted with the most part of the lands referred to in this interrogatory, and I should consider the lands bought by said Byers to be worth from one to five dollars per acre, except one or two sections, which would not be worth so much.

Answer to 8th interrogatory. I think that out of said lands referred to in this interrogatory, many tracts of 80 acres could be selected that would be worth 30 or 40 dollars and more.

Answer to 9th interrogatory. I am not in the general habit of noticing advertisements, but occasionally I have noticed them; I have no recollection of seeing such a notice as that referred to in this interrogatory; for I do not think I was out of my own township, except when I went to the City of New Orleans, in the spring of the year 1846; I was so closely confined at home that spring I might not have seen such advertisements if they had been put up.

Answer to 10th interrogatory. I might have so purchased.

Answer to 11th interrogatory. I have seen the execution, and there is no costs taxed as due me thereon, and cannot say whether any was due me; if there were any, it was not taxed. I never made any demand for costs. I do not know what my deputy may have done.

Answer to 12th interrogatory. I do not know as to the matters inquired of in this interrogatory.

Answer to 13th interrogatory. Sheriff Webb did ask my opinion as to the propriety of his selling on that day, and I told him that I thought he had no right to sell unless the Court was in session.

Answer to 14th interrogatory. I suppose from 15 to 25, and perhaps more, were present at said sale referred to in this interrogatory.

Answer to 15th interrogatory. I do not know of any other fact or thing that will be of any advantage to either of the parties in this suit, for I am not a lawyer, except that I will state that lands, sold under execution by sheriffs, generally sold very low, except in one or two cases within my recollection.

JAMES ROBINSON.

Sworn to and subscribed before me, this 25th day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

And I, David W. Lowe, commissioner as aforesaid, do further certify, that at the time and place specified in the caption of the foregoing deposition, the said deposition was reduced to writing by me, and after carefully reading the same to the said James Robinson, he subscribed the same in my presence, after having been by me duly sworn, examined, and cautioned, to testify the whole truth in regard to the matters in controversy between the parties. I further certify, that each and every one of the annexed interrogatories were read to him, and separately put to him, and by him separately answered; and I do further certify, that I am not of counsel or attorney to either of the parties in this cause, or in anywise interested in the event of the cause; and I further certify, that, it not being convenient for me to deliver said depositions with my own hand into said Circuit Court, I seal up the same, directed to said Circuit Court at Little Rock.

Given under my hand, this 21st day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

Commissioner's fee, $10 00.
Rec'd payment of A. H. Ringo.

D. W. LOWE,
Commissioner.

Filed 22d April, 1853.

WM. FIELD.
Clerk.

United States of America, District of Arkansas.

In the Circuit Court of the United States, for the District of Arkansas, on the 9th day of May, A. D. 1848, at the April Term, in Chancery.

FRANCIS SURGET, Complainant,
v.
WM. BYERS and ANDREW J. DOUGHERTY, Defendants. } On Bill.

At this day came the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have, and leave is hereby granted them, until the first day of January next, to take the depositions of witnesses generally, before any Judge or Justice of the Peace of the United States.

And thereupon, on motion, it further ordered, that this case be, and the same is hereby set for final hearing at the next term of this Court, upon bill, answers, replications, exhibits, and testimony to be taken in this behalf; until which time this case is hereby continued.

A true copy from the record.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

And afterwards, to wit, on the 9th day of April, 1849, the following order was had in said cause, to wit: This day came the said defendant, Byers, by A. Fowler, Esquire, his solicitor, and files his motion in writing for an enlargement of the time for taking testimony in this case; whereupon, it is ordered, that the time for that purpose be accordingly allowed for six months from this date.

United States of America, District of Arkansas.

In the Circuit Court of the United States, in and for the State and District of Arkansas.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS, and A. J. DOUGHERTY, Defendants. } In Chancery.

To the Honorable Benjamin Johnson, United States District Judge

in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court, in and for the State and District aforesaid.

Your petitioner, Francis Surget, the complainant in the above entitled suit, respectfully represents and shows to your honor, that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause, and that to establish the matters in issue said *said* cause, it is material to him to take the testimony of witnesses, to be read on the trial of said cause, at Batesville, in the County of Independence, also in Jackson and Phillips Counties, in the State of Arkansas, and in Smith County in the State of Texas, for which purpose he desires the appointment of such commissioners as shall be necessary and proper, and respectfully suggests to your Honor, that David W. Lowe is a competent and suitable person to take such testimony in the Counties of Independence and Jackson; Albert G. Underwood, in the County of Phillips; and in the State of Texas, the Clerk of the Circuit Court in and for Smith County, in the State of Texas; and he will ever pray, &c.

FRANCIS SURGET,
Complainant.
By RINGO & TRAPNALL,
His Solicitors.

State and District of Arkansas, *sct.*

On hearing the above petition, and the application thereupon made by said complainant for the appointment of commissioners to take the testimony of witnesses, to be read as evidence on the trial of the case in the said petition mentioned; ordered, that David W. Lowe be and he is hereby appointed commissioner to take such testimony in the Counties of Independence and Jackson, in the State of Arkansas; and that Alfred G. Underwood be, and he is hereby appointed commissioner to take such testimony in the County of Phillips, in said State; and that the Clerk of the Circuit Court, in and for the County of Smith, in the State of Texas, be and he is hereby appointed commissioner to take the testimony of any witness or witnesses in the State of Texas; and the Clerk of the United States Circuit Court, in and for the State and District aforesaid, will issue a commission to said persons respectively. Done in the vacation of said Court, in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge for the District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States for the District of Arkansas, do hereby certify that the foregoing petition and orders are truly copied from the records of my office.

[SEAL.] In testimony whereof I have hereto set my hand and affixed the seal of said Court, this 4th day of May, A. D. 1848.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

United States of America, District of Arkansas, *sct.*

The President of the United States to the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas, Commissioner, &c., greeting:

You are hereby required to cause to come before you William B. Duncan, a witness, and him diligently examine upon his corporeal oath first taken before you on the Holy Evangelists, upon the annexed interrogatories, as well on behalf of the said complainant as of the defendants, in a certain cause now depending in the Circuit Court of the United States for the Arkansas District, on the Chancery side thereof, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants; and that you reduce the same to writing, and when you shall have so taken his deposition, that you send the same with this commission, certified, sealed, and closed up under your hand, to the Clerk of our said Circuit Court at Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to [L. S.] be hereunto affixed, this 5th day of April, A. D. 1849, and the 73d year of American Independence.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

Interrogatories.

United States of America, District of Arkansas.

In the United States Circuit Court.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and
ANDREW J. DOUGHERTY, Defendants. } In Chancery.

Interrogatories to witnesses on behalf of the complainant.

Interrogatories to be propounded to William B. Duncan, a witness for said complainant in the above suit.

Interrogatory 1st, by complainant. Did you institute or cause to instituted in the Circuit Court of Jackson County, State of Arkan-

in and for the State and District of Arkansas, and one of the Judges of the United States Circuit Court, in and for the State and District aforesaid.

Your petitioner, Francis Surget, the complainant in the above entitled suit, respectfully represents and shows to your honor, that issue has been taken upon the answer of said defendant, William Byers, to his bill of complaint in said cause, and that to establish the matters in issue said *said* cause, it is material to him to take the testimony of witnesses, to be read on the trial of said cause, at Batesville, in the County of Independence, also in Jackson and Phillips Counties, in the State of Arkansas, and in Smith County in the State of Texas, for which purpose he desires the appointment of such commissioners as shall be necessary and proper, and respectfully suggests to your Honor, that David W. Lowe is a competent and suitable person to take such testimony in the Counties of Independence and Jackson; Albert G. Underwood, in the County of Phillips; and in the State of Texas, the Clerk of the Circuit Court in and for Smith County, in the State of Texas; and he will ever pray, &c.

FRANCIS SURGET,
Complainant.
By RINGO & TRAPNALL,
His Solicitors.

State and District of Arkansas, *sct.*

On hearing the above petition, and the application thereupon made by said complainant for the appointment of commissioners to take the testimony of witnesses, to be read as evidence on the trial of the case in the said petition mentioned; ordered, that David W. Lowe be and he is hereby appointed commissioner to take such testimony in the Counties of Independence and Jackson, in the State of Arkansas; and that Alfred G. Underwood be, and he is hereby appointed commissioner to take such testimony in the County of Phillips, in said State; and that the Clerk of the Circuit Court, in and for the County of Smith, in the State of Texas, be and he is hereby appointed commissioner to take the testimony of any witness or witnesses in the State of Texas; and the Clerk of the United States Circuit Court, in and for the State and District aforesaid, will issue a commission to said persons respectively. Done in the vacation of said Court, in the State and District aforesaid, this 12th day of November, A. D. 1848.

B. JOHNSON,
United States Judge for the District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States for the District of Arkansas, do hereby certify that the foregoing petition and orders are truly copied from the records of my office.

[SEAL.] In testimony whereof I have hereto set my hand and affixed the seal of said Court, this 4th day of May, A. D. 1848.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

United States of America, District of Arkansas, *sct.*

The President of the United States to the Clerk of the Circuit Court in and for the County of Smith, in the State of Texas, Commissioner, &c., greeting:

You are hereby required to cause to come before you William B. Duncan, a witness, and him diligently examine upon his corporeal oath first taken before you on the Holy Evangelists, upon the annexed interrogatories, as well on behalf of the said complainant as of the defendants, in a certain cause now depending in the Circuit Court of the United States for the Arkansas District, on the Chancery side thereof, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants; and that you reduce the same to writing, and when you shall have so taken his deposition, that you send the same with this commission, certified, sealed, and closed up under your hand, to the Clerk of our said Circuit Court at Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to [L. S.] be hereunto affixed, this 5th day of April, A. D. 1849, and the 73d year of American Independence.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

Interrogatories.

United States of America, District of Arkansas.

In the United States Circuit Court.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and
ANDREW J. DOUGHERTY, Defendants. } In Chancery.

Interrogatories to witnesses on behalf of the complainant.

Interrogatories to be propounded to William B. Duncan, a witness for said complainant in the above suit.

Interrogatory 1st, by complainant. Did you institute or cause to instituted in the Circuit Court of Jackson County, State of Arkan-

sas, a suit in the name of William B. Duncan, Francis Surget, Stephen Duncan, and John Ker, against one Noadiah Marsh? If yea, about what time? Who did you employ as attorney? What was the result of said suit? Did you or not ever inform the complainant, Francis Surget, John Ker, or Stephen Duncan, or either of them, of the institution and existence of said suit?

Interrogatory 2d, by complainant. Did you ever hear or know that judgment was rendered in said suit against the plaintiffs for costs of the suit? If yea, about when did you first learn that fact?

Interrogatory 3d, by complainant. Were you formerly a citizen of Arkansas? If yea, did you reside in Arkansas at the time you caused said suit to be brought against said Marsh? When did you remove from the State of Arkansas to where you now reside, or to the State of Texas?

Interrogatory 4th, by complainant. Did Francis Surget, John Ker, or Stephen Duncan, ever reside in Arkansas? If yea, when, and where?

Interrogatory 4th, by complainant (should be 5th. Clerk). Do you know or can you set forth any other matter or thing which may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

FRANCIS SURGET,
Complainant.
By W. H. & A. H. RINGO
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 2d October, 1848.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

District of Arkansas, *sct.*

I, William Field, Clerk of the Circuit Court of the United States for the District of Arkansas, do hereby certify that the foregoing interrogatories, from 1 to 5, are truly copied from the originals now on file in my office.

In testimony whereof, I have hereto set my hand and affixed [L. S.] the seal of said Court, this 5th day of May, A. D. 1849, and the 73d year of American Independence.

WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

State of Texas, County of Smith.

Be it remembered that on this 28th day of September, A. D. 1849,

I, Christopher C. Alexander, duly commissioned, Clerk of the District Court in and for the County of Smith and State of Texas aforesaid, by virtue of a Dedimus Potestatum issued from the United States Circuit Court for the District of Arkansas, and hereto annexed, directing me to take the deposition of William B. Duncan, to be read as evidence on the trial of a certain cause now pending in the said United States Circuit Court in Chancery, for the District of Arkansas, wherein Francis Surget is complainant v. William Byers and Andrew Dougherty, defendants, I have caused to come before me William B. Duncan, at my office, in said County of Smith and State of Texas, whom I have examined and whose deposition is hereunto annexed, as follows, to wit:

William B. Duncan, witness, of lawful age, being duly sworn, deposeth as follows:

Interrogatory 1st, by conplainant. Answer to. I did institute a suit in my name (William B. Duncan), Francis Surget, Stephen Duncan, and John Ker, against one Noadiah Marsh, in the Circuit Court of Jackson County and State of Arkansas. I do not recollect the precise time when said suit was instituted; but while said suit was pending, I saw in a newspaper purporting to be published at Little Rock, Noadiah Marsh's, the defendant's, application for the benefit of the Bankrupt Law. I employed William F. Denton, of Batesville, as my attorney in said suit. I do not know the result. I never informed the complainants, Francis Surget, Stephen Duncan, or John Ker, or either of them, of the institution and existence of said suit, or either of the existence or institution thereof. In fact, I was desirous to conceal from them the existence or institution of said suit, because it was brought to recover back the consideration for a lovely donation claim or claims, which I was the acting partner of Francis Surget, Stephen Duncan, and John Ker, had bought of the said Noadiah Marsh, which said lovely donation claim proved to be bad or defective, and I did not wish my partners to know that I had made any purchase for the firm which would result in loss to them.

Interrogatory 2d, by complainant. Answer to. I never heard or knew that judgment was rendered in said suit against the plaintiffs for costs of the suit, until so informed by letter from William H. Ringo, some twelve months ago.

Interrogatory 3d, by complainant. Answer to. I resided in Monroe County, Arkansas, when I caused said suit to be brought against said Marsh. I removed from Arkansas in May, 1844, starting on the 2d day of May to the State of Texas (then the Republic of Texas), where I now reside.

Interrogatory 4th, by complainant. Answer to. Francis Surget, Stephen Duncan, and John Ker, resided in and near Natchez, in the State of Mississippi, at the institution of said suit, and during its continuance, and neither of them ever resided in Arkansas, at any time, so far as I know.

Interrogatory 5th, marked in the Dedimus interrogatory 4th. Answer to. Francis Surget, Stephen Duncan, and John Ker, were my partners in entering and purchasing lands in Arkansas; they furnished the capital, and it was my part to select lands, enter and purchase, for a certain proportion or share of the lands so secured; after getting through with the operation our lands were divided among the company, and I sold out my entire interest in said lands, in Jackson County, and in every other county, except Monroe and Chicot Counties, to Francis Surget. I have no interest in the lands sold by virtue of the judgment for costs against said Francis Surget, Stephen Duncan, and John Ker and myself; nor had I any interest in the same at the time they were sold. I do not recollect the time when I conveyed my interest in said lands, but my conveyances to Francis Surget are of record in the counties in which the lands are situated, and the dates will there appear. Francis Surget, Stephen Duncan, and John Ker, nor neither of them, ever attended to any business of the firm of William B. Duncan and Company, in Arkansas. The whole charge and management of the concern devolved on me as the business or active partner of said firm.

WILLIAM B. DUNCAN,

Sworn to and subscribed before me this 28th of September, A. D. 1849.

C. C. ALEXANDER,
Clerk.
By Deputy, WILLIAM H. CARTER,
Deputy Clerk Superior Court.

Filed 22d April, 1853.

WILLIAM FIELD,
Clerk.

United States of America, District of Arkansas, *sct.*

In the Circuit Court of the United States, for the District of Arkansas, in Chancery sitting, on the 9th May, 1848, at the April Term, A. D. 1849.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY,
Defendants.

This day comes the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have, and leave is hereby granted, until the first day of January next to take the depositions of witnesses generally, before any Judge or Justice of the Peace of any of the United States, to be read on the final hearing of this cause.

And thereupon, on motion, it is further ordered, that the case be, and the same is hereby set for final hearing at the next term of this

Court, upon bill, answers, replication, exhibits, and testimony, to be taken in this behalf, until which time this cause is hereby continued.

A true copy from the record.

Attest, WM. FIELD, Clerk.

By JOHN TRIGG, Deputy Clerk.

And afterwards, to wit, on the 9th day of April, 1849, the following was had in said cause, to wit:

This day comes said defendant, by A. Fowler, Esq., his solicitor, and files his motion in writing for an enlargement of the time for taking testimony in this case. Whereupon it is ordered, that the time for that purpose be accordingly allowed for six months from this date.

A true copy from the record.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

United States of America, District of Arkansas, *set.*

The President of the United States to David W. Lowe, Commissioner, &c., greeting:

You are hereby required to cause to come before you Richard Counts, a witness, and him diligently examine on the annexed interrogatories, on the part of the said defendant as well of the said complainant, in a certain suit now pending in our said Circuit Court, on the Chancery side thereof, in which Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants; and that you then and there examine him apart, upon his corporal oath first taken before you on the Holy Evangelists, and that you reduce his examination to writing, and when you shall have so taken it, that you send the same closed up with this dedimus, under your seal, to our said Circuit Court, at Little Rock, without delay.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court [SEAL.] to be hereunto affixed, this 30th day of July, A. D. 1849, and in the 74th year of American independence.

Attest, WM. FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

In the Circuit Court of the United States, for the District of Arkansas. In Vacation.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } In Chancery.

Interrogatories to be administered to Richard Counts, a witness to be produced, sworn, and examined in said cause, which is now pending and at issue between the said Francis and William in said Circuit Court, at Little Rock, in said district, on the part of the said fendant Byers.

1st interrogatory. Do you the parties complainant and defendants in the caption hereof named, or any or either, and which of them, respectively? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

2d. Were you or not present at the Town of Elizabeth, at the court-house, in Jackson County, in the State of Arkansas, on the 18th day of May, A. D. 1846, on the first day of the term of the Circuit Court for that county, and at the time that the sheriff of that county sold certain lands of the complainants, or of William B. Duncan & Co., under execution; and if so, state whether or not you were there representing yourself as the agent of one William Seamans, in the matter of an execution against him, and in favor of Alanson P. Sherville, then in the hands of Webb, sheriff of that county, which had issued from the Circuit Court of Independence County in the same State? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

3d. If then there, did you or not, as the agent of said Seamans, just before the sales of Seamans' lands, levied on by such sheriff, and advertised for sale, was about to take place, request and insist upon said sheriff not to sell said Seamans' lands, as the Judge of that Court was not present? and did or did not the said defendant, Byers, as the attorney for said Sherill, tell the sheriff and insist that he must sell said lands of Seamans, unless the amount of the execution was paid, and commence writing out a notice to said sheriff requiring him positively to sell said lands of Seamans, and did you or not then pay the amount of that execution for Seamans, to prevent the sheriff from selling his lands? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

4th and last interrogatory. Do you know or can you set forth any other matter or thing which may be benefit or advantage to the parties at issue in this cause, or either of them, or that may be mate-

rial to the subject of this your examination, on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. FOWLER,
Solicitor for William Byers.

July 13th, A. D. 1849.

Filed 13th July, 1849.

WILLIAM FIELD,
Clerk.
By JOHN T. TRIGG.

I, William Field, Clerk of the Circuit Court of the United States for the District of Arkansas, do hereby certify, that the foregoing interrogatories, from 1 to 4, are truly copied from the original now in file in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, this 30th day of July, A. D. 1849, and in the 74th year of American Independence.

[L. S.]

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

The execution of the within commission will appear by the schedule hereto annexed.

D. W. LOWE,
Commissioner.

Sept. 19th, 1849.

Depositions of Richard Counts, whose testimony alleged to be necessary to the defendants in the cause hereinafter named, taken and subscribed before me, David W. Lowe, duly appointed Commissioner, and upon the interrogatories hereto annexed, issued out of the Circuit Court of the United States for the District of Arkansas, on the Chancery side of said Court, on the 19th day of September, A. D. 1849, at the town of Batesville, in the County of Independence, in the State of Arkansas, to be read as evidence in a certain cause depending in the Circuit Court of the United States for the District of Arkansas, on the Chancery side thereof, wherein Francis Surget is complainant, and William Byers and Andrew J. Dogherty are defendants, on the part of said defendants, Wm. Byers; at which time and place the said Richard Counts, a witness known to me to be of lawful age, being by me duly sworn to testify the truth, did then and there, on his oath aforesaid, depose to each of said interrogatories, which were separately put and read to him by me as follows, to wit:

Answer to 1st interrogatory. I am acquainted with Wm. Byers, one of said defendants, but have no acquaintance with the said Surget nor Dogherty.

Answer to 2d interrogatory. I was present at the time and place

referred to in this interrogatory. I was not representing myself as the agent of William Seamans, but was acting as the agent of Robt. Wagoner, who had purchased the tract of land of said Seamans, which was levied upon as the property of Seamans; and who by the terms of purchase, was to pay the costs of said execution under which said levy was made, which execution was in favor of Alansom P. Sherill.

Answer to 3d interrogatory. On the morning of that day, I approached near where John H. T. Webb, who was Sheriff of Jackson County, and William Byers, the defendant, were conversing about the sale of said land, levied on as the property of Seamans; and the Sheriff appeared somewhat reluctant about selling the same, and said Byers was urging upon him to proceed and sell said land; at that time the Sheriff looked up and saw me, and remarked, that he expected that he would get the money on said execution without selling the land; said Byers then turned off; said Sheriff told me that said Byers had been urging him to sell the land, and said if he did not sell, that he, Byers, would hold him responsible. I have no recollection of seeing said Byers commencing to write a notice to the Sheriff; he might have done so, but I do not recollect. Just as said Byers turned off from the Sheriff, he, Byers, remarked, that it must be settled positively, or the land must be sold. I then paid off the amount of said execution, and took the Sheriff's receipt therefor. Said Byers was representing himself as the attorney of the said Alanson P. Sherill; as soon as I paid off said execution, I left town and went home. I was living in Independence County in said State.

Answer to the 4th interrogatory. I do not know of anything that would be of any benefit to either of the parties to this suit, or material to the subject of this examination.

RICHARD COUNTS.

Sworn to and subscribed before me, this 19th day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

And I, David W. Lowe, Commissioner as aforesaid, do further certify, that at the time and place specified in the caption of the foregoing deposition of the said Richard Counts, the said deposition was reduced to writing by me, and after carefully reading the same to the said Richard Counts, he subscribeth same in my presence, after having been by me first duly sworn, examined, and cautioned, to testify the whole truth in regard to the matters in controversy between the parties. I further certify, that each and every one of the annexed interrogatories were read to him, and separately put and separately answered by said witness. And I do further certify, that I am not of counsel or attorney to either of the parties to said suit, or in any way interested in the event of said cause. And I further certify, that it not being convenient for me to deliver said depositions

with my own hand in and to said Circuit Court, I seal up the same directed to said Circuit Court, at Little Rock, and I deposit this package in the Post Office at Batesville.

Given under my hand, this 19th day of September, A. D. 1849.

D. W. LOWE,
Commissioner.

Fee of Commissioner,	$3 00
" Richard Counts, Wits.	2 00
	$5 00

Received payment of William Byers.
(Indorsed) D. W. LOWE,
Commissioner.

Filed 22d April, 1853.

WM. FIELD,
Clerk.

The United States of America, District of Arkansas, *sct.*

In the Circuit Court of the United States, for the District of Arkansas, in Chancery, sitting; on 9th May, 1848; at April Term of said Court, A. D. 1848.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } On Bill.

At this day came the parties by their solicitors, and thereupon, on motion of the complainant, it is ordered, that each party have and leave is hereby granted them, until the first day of January next, to take the depositions of witnesses generally before any Judge or Justice of the Peace of any of the United States, to be read in the final hearing of the cause.

And thereupon, on motion, it is further ordered, that this case be, and the same is, hereby set for final hearing at the next term of this Court, upon bill, answer, replications, exhibits, and testimony to be taken in this behalf, until which time this case is hereby continued.

In testimony, that the above is a true copy from the record.

WILLIAM FIELD,
Clerk.

By JOHN T. TRIGG,
Deputy Clerk.

And afterwards, to wit, on the 9th April, 1849, the following order was had in said cause, to wit:

This day comes said defendant, Byers, by A. Fowler, Esq., and files his motion, in writing, for an enlargement of the time for taking testimony in this case.

Whereupon it is ordered, that the time for that purpose be accordingly allowed for six months from this date.

A true copy from the record.

Attest, WILLIAM FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

The United States of America, District of Arkansas, *set.*

The President of the United States, to David W. Lowe, Commissioner, greeting: You are hereby commanded to come before John H. T. Webb, a witness, and him diligently examine on the annexed interrogatories and cross-interrogatories, on the part of defendants, as well as of the complainant, in a certain suit now pending in our said Circuit Court, on the Chancery side thereof, in which Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, and that you then and there examine him apart, upon his corporal oath, first taken before you, upon the Holy Evangelists, and that you reduce his examination to writing; and when you shall have so taken it, that you send the same, with this dedimus, closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

[SEAL.] In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit Court to be hereto affixed this 30th day of July, A. D. 1849, and in the 74th year of American Independence.

Attest, WILLIAM FIELD, Clerk.

By JOHN T. TRIGG, Deputy Clerk.

The execution of this commission appears from the schedule hereunto annexed.

D. W. LOWE, Commissioner.

August 23, 1849.

In the Circuit Court of the United States for the District of Arkansas. In Vacation.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } Chancery.

Interrogatories to be administered to John H. T. Webb, a witness to be produced, sworn, and examined in said cause, which is now pending and at issue between the said Francis and William, in said Circuit Court, at Little Rock, in said District, on the part of the said defendant, William Byers.

1st interrogatory. Do you not know the parties, complainant and

defendants, in this caption hereof named, or any and which of them, respectively? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge and remembrance and belief.

2d. Were you, or not, sheriff of Jackson County, in the State of Arkansas, during the year of 1846, and if you were, did, or not, an execution come into your hands, as such sheriff, to be executed in favor of Noadiah Marsh, and against William B. Duncan & Co., and when and what were all the facts and circumstances connected therewith? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

3d. Did you, or not, as such sheriff, after you had levied said execution on sundry lands of the said William B. Duncan & Co., advertising the same for sale, by putting up, more than twenty days previous to the day of sale, written advertisements, particularly describing said lands, and giving notice that, by virtue of said execution and levy, you would sell the same, in three of the most public places in each township, in said County of Jackson? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

4th. At what term of the said Jackson Circuit Court, and on what day of the term, and of the month, did you sell said lands? and were there many or few persons present at said sale, or as many or more, or fewer, than usually attend such sales at the same place? Declare the truth of the several matters inquired after, according to the best of your knowledge, remembrance, and belief.

5th. Did you, or not, have in your hands, as such sheriff, several executions in favor of and against different persons at the same time, which were levied on lands and slaves, which you had in like manner advertised for sale, at the same time and place, at which you sold the said lands above-mentioned? And did you, or not, sell upon all of said executions, except where you were instructed by the parties not to sell? and do you not particularly remember one of such executions in favor of William W. Tunstall against Frost, levied upon a negro, advertised to be sold on that day, but not sold in consequence of the parties compromising and directing you not to sell? And, if so, whether, or not, the said Byers was Tunstall's attorney, and William C. Bevins, Frost's? and that they had a conversation on the subject in your presence, and what did they say? And was, or not, this the only execution then in your hands, on which you did not sell on that day, except those that were paid off? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

6th. Do you remember whether or not you had in your hands, as sheriff, at the same time, an execution in favor of Alanson P. Sherill, against William Seamans, issued from the Circuit Court of Indepen-

dence County, and which you had levied upon land, and advertised for sale on the same day, and at the same place? and whether or not, just before the sales were to take place, one Richard Counts, from Independence County, was there representing himself to be the agent of said Seamans, and requested you not to sell the land, as the Judge was not there? and whether or not the said defendant Byers, as the attorney of said Sherill, told you must sell it, if Counts did not pay the money? that whether or not, the said Counts insisted on you not to sell? that you hesitated about it; and said Byers again told you that must sell the lands unless Counts paid the money; that Counts had the money and was only seeking delay? and whether or not said Byers did not then commence writing a note to you, requiring you to sell the land, and that said Counts then paid the money, and satisfied that execution? Declare the truth of the several matters by this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.

7th. Do you know or can you set forth any other any matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth same fully and at large in your answer.

A. FOWLER,
Solicitor for William Byers.

July 13th, 1849.

Filed 13th July, 1849.

WM. FIELD,
Clerk.
By JOHN T. TRIGG.

In the Circuit Court of the United States, Arkansas District.
In Vacation.

FRANCIS SURGET, Complainant,
v.
WILLIAM BYERS and ANDREW J. DOUGHERTY, Defendants. } In Chancery.

Cross-interrogatories, to be administered to John H. T. Webb, a witness to be examined on the part of said defendant, William Byers, on interrogatories filed by him in said cause, on the 13th day of July, A. D. 1839.

1st cross-interrogatory. If an execution in favor of Noadiah Marsh, against William B. Duncan & Co., was placed in your hands, as Sheriff of Jackson County, in the State of Arkansas, in the year A. D. 1846, as attended to or mentioned in the second interrogatory of said Byers, what was the date of such execution? What was the amount thereby directed to be levied? When said execution came to your hands? Who placed the same in your hands? What

directions, if any, in regard to said execution and the service thereof, and the levy of property by virtue thereof, were given to you? Who gave you such directions? Were such directions in writing, or verbal? If written, in whose handwriting, and where are they? When did you receive such instructions? What property did you levy by virtue and to satisfy said execution? Set forth, and particularly, each and every tract or parcel of land by you, for the satisfaction of said execution, and the numbers of acres contained in each tract, the quality of soil, advantages of situation, and description of improvement thereupon, if any, and the value of each tract at the time the same was levied and sold by you on said execution? What number of advertisements of said sale were posted or put up, where that is? At what particular place was each one of said advertisements posted or put up? By whom were they so put up, and when? Do you, of your own knowledge, or from information of others, know that they were so put up? State what you know of your own knowledge, as to the putting of such advertisements, and what from information of others?

2d cross-interrogatory. How many townships was there in said County of Jackson, when said advertisements in said first cross-interrogatory mentioned were put up, as stated in your answer thereto, the name of each such township, and what three places in each of said townships were, at that time, the three most public places therein.

3d cross-interrogatory. When did you sell the lands levied, as set forth in your answer to said first cross-interrogatory? At what hour or hours of the day was such sale thereof made? What number of persons were present at such sale? Had there not been on that day, and before any sale made by you, a much greater number of persons at and about the place of said sale, than were there present at the time of such sale? Was not the subject of sales on execution then and there much spoken of, by and among the people? And was it, or not, the common understanding among the people there assembled, that you would not sell any lands that day, by virtue of executions in your hands; and did, or not, many persons leave there before such sale, under the belief that no such sale would be made? State, particularly, the whole truth as to the matters above inquired of, and if you can set forth the names of all persons present at such sale, according to the best of your knowledge, remembrance, and belief.

4th. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. H. & A. M. RINGO,
And RINGO & TRAPNALL,
Solicitors for Complainant.

Filed 23d July, 1849.

WM. M. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States, in and for the District of Arkansas, do hereby certify that the foregoing interrogatories, from 1 to 7, and cross-interrogatories, from 1 to 4, in the case therein named, are true copies from the originals now on file in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said Court, this 30th day of July, [SEAL.] A. D. 1849, and in the 74th year of American independence.

Attest, WM. FIELD,
Clerk.
By JOHN T. TRIGG,
Deputy Clerk.

The execution of the annexed commission appears by the schedule hereunto annexed.

Attest, D. W. LOWE,
Commissioner.

Depositions of John H. T. Webb, whose testimony is alleged to be necessary to the defendants in the cause hereinafter named, taken and subscribed before me, D. W. Lowe, duly appointed commissioner for that purpose, in pursuance of a commission, and upon the interrogatories and cross-interrogatories hereto annexed, issued out of the Circuit Court, in Chancery sitting, of the United States, for the District of Arkansas, to be read as evidence in a certain cause depending in said Court, at Little Rock, in said District and State, wherein Francis Surget is complainant, and William Byers and Andrew J. Dougherty are defendants, on the part of said defendants, *on the part of said defendant*, William Byers; which said depositions were taken and subscribed before me at the County of Jackson, in the State of Arkansas, on the 23d day of August, A. D. 1849. At which time and place the said John H. T. Webb, a witness, known to me to be of lawful age, being to me produced, and by me duly sworn to testify the truth, the whole truth, and nothing but the truth, did then and there, on his oath aforesaid, depose to each of said interrogatories and cross-interrogatories, which were separately put and read to him by me as follows, to wit:

Answer of John H. T. Webb, to the 1st interrogatory. I am acquainted with William Byers and Andrew J. Dougherty, the defendants in this cause; but not personally acquainted with Francis Surget, the complainant.

Answer to 2d interrogatory. I was sheriff of Jackson County in the year A. D. 1846, until some time in the month of October of that year, when my commission expired. Such an execution as the one referred to in this interrogatory did come to my hand as sheriff of said County of Jackson, to be executed, on the 13th day of April, A. D. 1846. Said execution was handed to me by William Y. Haggard, who was at that time the Clerk of the Circuit Court of said County of Jackson, and at the same time he handed me a list of lands purporting to be the lands belonging to William B. Duncan & Co., directing me to levy said execution upon the lands described in said list, and accordingly, as soon as I conveniently could, proceeded to levy said execution upon said lands, and advertise them for sale, which advertisements particularly described said lands, and by putting up three of such advertisements in each township in said county, at the most public places in each township, at least twenty days previous to the day fixed upon as the day of sale, which was to be the first day of the term of the Circuit Court, to be held in said county, then next ensuing, and to take place between the hours of ten o'clock, A. M., and three o'clock, P. M., of said day, and which said advertisements, as well as describing said lands, also mentioned the time, place, and terms of sale. Which advertisements were put up with my own hands in the central townships, and those of them which were designed for some of the more remote townships were sent out by trusty and faithful men to put up, with a particular request that they should be particular and punctual to put them up, and that I have no doubt but that they were punctually posted up in each township in the county. It was my custom, as well as the custom of my predecessor in office, when it was not convenient for me to go into the remote townships in the county to put up advertisements, to send the same out by some person that I have confidence in, to put up the same. It has also been the custom with attorneys-at-law, who had the control of judgments, and particularly with William Byers and J. M. Patterson, to furnish me with a list of such property, lands, negroes, &c., belonging to defendants in each judgment as they were controlling, as well as copies of forms for advertisements, and written instructions, so that the statute might be particularly complied with, and that I was particular to have everything right. On the morning of the day upon which said lands were advertised to be sold, which was on the 18th day of May, A. D. 1846, I ascertained that there would be no Circuit Court held on that day, in consequence of the failure of the Judge to attend, and fearing that a sale made by me, as such sheriff, would be void unless the Court was in session, I hesitated some time about whether I should proceed with the sales, and was about declining to sell on that day, when William Byers, the defendant in this suit, insisted that I should proceed to sell in every case which he was controlling; and accordingly, I did proceed to sell said lands in pursuance of said advertisements, which sale

commenced about twelve o'clock on that day, and continued until the whole of said lands were disposed of; and that the whole of said lands disposed of before three o'clock in the afternoon of that day; and which lands were sold in such quantity, and for such sums, and at the place, as set forth in my return indorsed upon the execution upon which the same were sold, and which execution and return thereon indorsed, I returned into the office of the Clerk of said Circuit Court. And that the greater part of said lands were sold to William Byers, the defendant in this suit; and that I did afterwards execute, sign, seal, and acknowledge a deed, as such sheriff, in due form, to said land so sold to him.

Answer to 3d interrogatory. After I levied said execution upon said lands, I did advertise the same for sale by putting up written advertisements, more than twenty days previous to said day of sale, in three of the most public places in each township in said county, that by virtue of said execution and levy I would sell the same at the court-house door, in the County of Jackson, on the 18th day of May, A. D. 1846, between the hours *the hours* prescribed by law for judicial sales; which said advertisements particularly described said lands, the time, place, and terms of sale, and were put up in the manner related in my answer to the second interrogatory.

Answer to 4th interrogatory. Said lands were sold on the 18th day of May, A. D. 1846, being the first day of the May Term of the Circuit Court for said County of Jackson. There were present at and during said sale some twenty or thirty persons; at such sales sometimes more persons were present, and sometimes not so many. I am quite confident there were twenty persons present at and during said sale.

Answer to the 5th interrogatory. I did have several other executions in my hands at that time, in favor of and against different persons, which were levied on lands and slaves, and which in like manner I had advertised for sale at the same time and place. I recollect one in favor of W. W. Tunstall, and against John R. Frost, which I had levied upon a negro girl; and one in favor of A. P. Sherill v. 3 William Leamand, from Independence County, which I had levied upon a tract of land; all of which the defendant, Byers, had the control of as attorney at law. And that I sold under all executions except I was instructed by the parties not to sell. I distinctly recollect the execution in favor of W. W. Tunstall against John R. Frost, which was levied upon a negro girl, which girl was not sold, in consequence of the parties compromising and directing me not to sell. The said Byers was attorney for said Tunstall, and W. C. Bevins was attorney for said Frost; and they had a conversation in my presence about the matter, but I do not recollect the words of that conversation, only that said Byers insisted upon a sale, which was opposed by said Bevins until the matter was compromised, and they directed me not to sell; and so far as I recollect, this is the only execution on which I did not sell on that day, except those that were paid off or settled.

Answer to 6th interrogatory. I did have such an execution in my

hands at that time as is described in this interrogatory, and had levied the same upon a piece of land, and had advertised the same for sale at the same time and place, and one Richard Counts, from Independence County, representing himself to be the agent of one Mr. Wagoner, who claimed to be the owner of the land, was there, and requested me not to sell the lands, as the lands did not belong to Seamans, but belonged to Wagoner; and that said Byers, who was the attorney of Sherrill, told me I must sell the land if Counts did not pay the money, that he, Counts, was only seeking delay. And that said Byers, either in this case or in the case of Marsh v. Duncan and others, I do not recollect which, commenced writing a notice to me, requiring me to sell or he would hold me responsible. I then determined to sell, and Byers ceased writing the notice, and that Counts then paid over the money, and satisfied said execution.

Answer to 7th interrogatory. When the hour of sale arrived on said day, and I was about to proceed with the same, I made a proclamation at the tavern door, and at the doors of the stores, and in the main street of the Town of Elizabeth, giving notice that I was about to proceed to the court-house to sell divers tracts of lands executed as the property of W. B. Duncan & Co., and then proceeded to the court-house in said Town of Elizabeth, in said County of Jackson, for the purpose of selling said land; and that several interrogated me as to the title, and I told them that I could not say how good the title was, but I was of the opinion that they would buy a lawsuit; and that Mr. Byers, the said defendant in this suit, remarked to the audience, and gave it as his opinion, that if they would purchase they would acquire a good and valid title; that he would probably buy some himself, and was willing to risk the title, or words to this import; and that he would stand a lawsuit, or law it out, and that if he gained the suit it would be deciding it for them; and told the company repeatedly they had better buy the lands. I was Sheriff of Jackson County from March, A. D. 1844, to October, A. D. 1846; and that at all sales made by sheriffs and marshals under execution in said county, that lands always sold very low, for a mere trifle. I have seen and known of lands sold at such sales that only brought two cents per acre, and many tracts for less than that amount; and that I never have known of any case in the county of land sold under execution when it brought anything near its value. I never had any conversation with Mr. Byers on the subject of the sale until the day the sale took place; and that during the sale I saw nothing in him more than that of a vigilant attorney discharging his duty in trying to make the amount of said execution according to law; that he stated to the people present that he believed if they would buy they would get a good title, and that he wanted was to make the amount of the execution, which was his duty.

I know nothing more that will be of any benefit to either of the parties, or to the subject of this examination.

JOHN H. T. WEBB.

Sworn to and subscribed before me, on this 23d day of August, A. D. 1849.

D. W. LOWE,
Commissioner.

Answer upon cross-interrogatories, by John H. T. Webb. To the 1st cross-interrogatory. Yes, such an execution as that described in this interrogatory did come to my hands as sheriff, and was dated the 13th day of April, A.D. 1846, and which commanded me to make the sum of thirty-seven dollars and eighty-five cents. Said execution came to my hands on the 13th day of April, A.D. 1846; the same was placed in my hands, by William Y. Haggard, Clerk of Jackson County; at the same time he handed me a list of lands to be levied upon, and he, the said Haggard, stated to me that he wanted me to levy upon said lands, and to make his costs out of the same, which was all the instructions I received. Said list of lands was in writing, but the instructions were verbal. The said list of lands, I am of the opinion, is in the hand of writing of Wm. Byers, which said list is now in my possession. I received said instructions at the same time the said execution was placed in my hands. I levied the same upon the following described lands and tenements, situated in said County of Jackson, to wit: The S.E. quarter of section 9, Township 8 north, Range 3 west, containing 160 acres. The S.W. quarter same section, Township, and Range, containing 160 acres. S.E. quarter section 10, same Township and Range, containing 160. S.W. quarter same section, Township, and Range, containing 160 acres. S.E. quarter section 15, same Township, and Range, containing 160 acres. S.W. quarter same section, Township, and Range, containing 160 acres. N.W. quarter same section, Township, and Range, containing 160 acres. N.E. quarter, same section, Township, and Range, containing 160 acres. N.W. section 17, same Towship, and Range containing 160 acres. S.W. quarter same section, Township and Range, containing 160 acres. S.E. quarter same section, Township, and Range, containing 160 acres. N.E. quarter same section, Township, and Range, containing 160 acres. S.E quarter section 22, same Township and Range, containing 160 acres. S.W. quarter same section, Township, and Range, containing 160 acres. N.W. quarter same section, Township, and Range, containing 160 acres. N.E. quarter same section, Township, and Range, 160 acres. S.E. quarter section 8, same Township, and Range, 160 acres. S.W. quarter same Township, and Range, 160 acres. S.E. quarter section 29, same Township, and Range, 160 acres. S.W. quarter same section, Township, and Range, 160 acres. N.E. quarter same section, Township, and Range, 160 acres. N.W. quarter same section, Township, and Range, 160 acres. Fractional section 30, same Township, and Range, $629\frac{3}{100}$ acres. Fractional section 1, same Township, and Range, $641\frac{8}{100}$ acres. N.E. quarter section 2, same Township, and Range, 160 acres. S.E. quarter same, 160 acres. S.W. quarter

2948

section 18, same Township, and Range, 160 acres. N.W. quarter same section, Township, and Range, 160 acres. W. half of N.E. quarter section 18, Township, and Range, 80 acres. N.E. quarter section 19, same Township, and Range, 160 acres. N.W. quarter same section, Township, and Range, 160 acres. S.W. quarter same section, Towhship, and Range, 160 acres. S.E. quarter same section, Township and Range, 160 acres. N.W. quarter section 8, same Township, and Range, 160 acres. N.E. quarter same section, Township, and Range, 160 acres. Fractional section 5, same Township, and Range, $563\frac{82}{100}$ acres. N.W. quarter section 9, same Township, and Range, 160 acres. W. half N.E. quarter same section, Township, and Range, 80 acres. Section 30, in Township 7 north, of Range 3 west. N.E. quarter section 24, same Township, and Range, last above named. N.W. quarter of same Township, and Range, 160 acres. S.E. quarter same section, Township, and Range, 160 acres. N.E. quarter section 36, same Township, and Range, 160 acres. N.W. quarter same section, Township, and Range. S.W. quarter same section, Township, and Range, 160 acres. S.E. quarter same section, Township, and Range, 160 acres. N.W. quarter section 20, same Township, and Range, 160 acres. N.E. quarter same section, Township, and Range, 160 acres. S.E. quarter same section, Township, and Range, 160 acres. S.W. quarter same section, Township and Range, 160 acres. N.E. quarter section 8, same Township, and Range, 160 acres. N.W. quarter same section, Township, and Range, 160 acres. S.W. quarter same section, Township, and Range, 160 acres. S.E. quarter same section, Township, and Range, 160 acres. Section 4, in Township 12 north, in Range 2 west, and sections number 7 and 9, in same Township, and Range. Sections number 10 and 15, in Township 12 north, of Range 3 west. And S.W. quarter of fractional section 4, in Township 8 north, of Range 3 west. The value of the several different and separate tracts, I am unable to give; nor of the number of acres contained in each, more than as stated in the foregoing list. Some of the tracts of land I believe to be good land, and other tracts are of but very little value. I do not know that any of said lands had improvements on them, at the time the same were levied upon and sold by me. As soon after said lands were levied upon as convenient, I proceeded to advertise the same for sale, by putting up three of such advertisements in each township in the county, at least, twenty days before the day of sale; many of them were put up by myself, and others by my deputy, and for some of the most remote townships the same were carried by trustworthy men, to put up. I cannot state upon what particular day or at all of the particular places in the different townships the same were put up, more than I know one of such advertisements was placed on the court-house door in said county, and think at two other places in the Town of Elizabeth, and from my own knowledge I know that many of such advertisements were posted up, and from the information of others, I believe they

were all put up. From my own knowledge I know they were put up in the more central townships, for many were put up by myself; but as before stated, they were sent out to the more distant townships by men in whom I had implicit confidence, but I cannot now recollect the names of any of the persons by whom the same were carried. I am informed and believe that one Mr. Foley put up said advertisements in two townships, to wit: Taylor's Bay, and Bayou Cache Townships.

Answer to 2d cross-interrogatory. At the time referred to in the interrogatory there were seven townships in said County of Jackson, to wit: Village Township, Oil Trough Township, Cache Township, Wideman Township, Byrd Township, Taylor's Bay Township, Bayou Cache Township; in Village Township Elizabeth and Jacksonport are two of the most public places. I cannot state what other place would be most public in the township. In Taylor's Bay Township, the most public place is Chickasaw Crossing, and I cannot state what other two places would be the most public places in said township, and as to the other five townships I cannot say what particular places therein would be the most public places at that time.

Answer to 3d cross-interrogatory. I sold said lands on the 18th day of May, A.D. 1846; said sales commenced between the hours of eleven and twelve o'clock in the forenoon of that day; the sale occupied about one hour and a half; there were, I think, between twenty and thirty persons present at said sale. The largest number of persons which I saw on that day together was at the sale. The subject of the sale was much spoken by and among the people. I don't know of any understanding among the people, that there would be no sales made on that day by me, nor do I know of any person leaving the place under any such belief. I cannot now state the names of all the persons present at the sale; I recollect some of them, to wit: Wm. H. Morris, George Eder, Dr. Norwood, Judge Stevenson, A. J. Dougherty, G. Witherspoon, Wm. Byers, W. C. Bevens, Richard Crump, one or two by the name of Millanners, John C. Pugh, and Dr. Crow; there were many others, but do not now recollect who they were.

Answer to 4th cross-interrogatory. It has been customary for attorneys having control of executions in this county, to instruct the sheriff to levy upon all the property, or nearly all that can be found of the defendant, as property usually sells under execution for so small a sum, that it is impossible to form any opinion as to how much property would be sufficient to satisfy any execution. The list of lands furnished me by William Y. Haggard, as above stated, and upon which I levied said execution, did not contain near all of the lands which were owned, in said County of Jackson, by said Wm. B. Duncan & Co., perhaps not more than half, or but little more than half. At the time the complainant in this cause took my deposition in this case last winter, I did not have said execution and return,

and other documents, before me to refresh my memory as I now have, and may for the want of the same have stated some particulars somewhat differently from what I now have, though I stated all things as correctly as I could from memory. My depositions on the part of said complainant which were taken last winter, were reduced to writing by Mr. Ringo, who was acting as the solicitor for said complainant.

I do not know of any other matter or thing that would be of any material advantage or benefit to either of the parties in this cause or the subject of this examination, except that William Y. Haggard, the said clerk, at the time he handed me said execution and list of lands and instructions, was in very ill health, and never recovered the same, but died in the month of July next following.

JOHN H. T. WEBB.

Sworn to and subscribed before me, this 23d day of August, A.D. 1849.

D. W. LOWE,
Commissioner.

And I, David W. Lowe, Commissioner as aforesaid, do further certify, that at the time and place specified in the caption of the foregoing deposition of the said John H. T. Webb, the said deposition was reduced to writing by me, and after carefully reading the same to the said John H. T. Webb, he subscribed the same in my presence; after having been by me first duly sworn, examined and cautioned to testify the whole truth and nothing but the truth in regard to the matters in controversy between the parties. I further certify, that each and every one of the annexed interrogatories and cross-interrogatories were read to him, and separately put and answered by the said witness. And I do further certify, that I am not of counsel or attorney to either of the parties to said suit, or in anywise interested in the event of said cause. And I further certify, that it not being convenient for me to deliver said depositions with my own hand into said Circuit Court, I seal up the same, directed to said Circuit Court, at Little Rock, and I deposit the package in the Post Office, at Batesville. Given under my hand, this 23d day of August, A.D. 1849.

D. W. LOWE,
Commissioner.

Commissioner's fees for taking these depositions.

To D. W. Lowe, Commissioner, ...	$5 00
To J. H. T. Webb, Witness, ...	2 00
	$7 00

Received payment of Wm. Byers.

D. W. LOWE,
Commissioner.

Filed 22d April, 1853.

WM. FIELD,
Clerk.

Certificate No. 1404.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Francis Surget, of Adams County, Mississippi, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said Francis Surget, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the Public Lands," for the east half of section nine; the west half of section fourteen; the west half of section twenty-three; the east half of section twenty-four; the southeast quarter and the east half of the southwest quarter of section thirty-six; the northeast quarter and the east half of the northwest quarter of section twenty-one; section ten and section fifteen, in Township twelve north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing in all three thousand and forty acres, according to the official plot of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tracts have been purchased by the said Francis Surget. Now know ye, that the United States of America, in consideration of the premises and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give, and grant, unto the said Francis Surget, and to his heirs, the said tracts above described; to have, and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Francis Surget, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the 16th day of August, in the year of our Lord one thousand [L. S.] eight hundred and thirty-eight, and of the Independence of the United States the 63d.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.
JOS. L. WILSON,
Acting Recorder of the General Land Office, ad interum.

Recorded Vol. 3, page 47.
Filed 24th September, 1847.

WM. FIELD,
Clerk.
By JOHN T. TRIGG.

Certificate No. 1405.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Francis Surget, of Adams County, Mississippi, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said Francis Surget, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the Public Lands," for the northwest fractional quarter of fractional section three; fractional section four; fractional section seven; the north half of section eight; section nine; the west half of section fourteen; the south half of section fifteen; the east half of section seventeen; the west half of fractional section eighteen; the north half of section twenty-two; the east half of section twenty-eight; and the east half of section thirty-three; in Township twelve north, of Range two west, in the District of lands subject to sale at Batesville, Arkansas, containing in all five thousand and twelve acres and sixteen hundredths of an acre, according to the official plot of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tracts have been purchased by the said Francis Surget. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant unto the said Francis Surget, and to his heirs, the said tracts above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Francis Surget, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the sixteenth day of August, in the year of our Lord one thou-
[L. S.] sand eight hundred and thirty-eight, and of the Independence of the United States the 63d.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 48.

JOS. S. WILSON,
Acting Recorder of the General Land Office, ad interum.

Filed 24th September, 1847.

WM. FIELD,
Clerk.
By J. T. TRIGG,
Deputy Clerk.

Certificate No. 1100.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for Section fifteen, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these Letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[SEAL.]

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded, volume 3, page 406.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD.
By J. T. TRIGG.

2657

Certificate No. 1101.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act, making further provision for the sale of the public lands," for Section seventeen, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[SEAL.]

By the President.

MARTIN VAN BUREN.

By M. VAN BURLUP,
Secretary.

Recorded, Volume 3, page 407.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD,
By J. T. TRIGG,

Certificate No. 1102.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office, at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An Act, making further provision for the sale of the public lands," for fractional section eighteen, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and twenty-nine acres and fifty-two hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the Seal of the General Land Office to be hereunto affixed.

[L. S.] Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 408.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1103.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the Public Lands," for fractional section nineteen, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing six hundred and thirty-one acres and eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[L. S.]

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 409.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1106.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the Public Lands," for section twenty-two, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan and to his heirs the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand
[L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 412.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1108.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of

John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the public lands," for fractional section thirty, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing six hundred and twenty-nine acres and three hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand
[L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 414.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1111.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that

full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for the south half of fractional section five, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand [L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 417.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1118.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act

making further provisions for the sale of the public lands," for the west half of the northeast quarter of section nine, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing eighty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded, Volume 3, page 424.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD.
By J. T. TRIGG.

Certificate No. 1122.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th April, 1820, entitled "An Act making further provision for the sale of the public lands," for section twenty, in Township seven north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas,

containing six hundred and forty acres, according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded, Volume 3, page 428.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD.
By J. T. TRIGG.

Certificate No. 1123.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act, making further provision for the sale of the public lands," for section twenty-four, in Township seven north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen

Duncan. Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord, one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[L. S.]

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Volume 3, page 429.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1128.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress, of the 24th of April, 1820, entitled "An act making further provision for the sale of the Public Lands," for section thirty-six, in Township seven north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres, according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor-General, which said tract has been purchased by the William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these pre-

sents do give and grant, unto the said Stephen Duncan, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[L. S.] Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Volume 3, page 433.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1094.

The United States of America, to all to whom these presents shall come, greeting.

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the south half of section nine, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premiess, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Stephen Duncan, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature there-

unto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[SEAL.]

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded, Volume 3, page 400.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD.
By J. T. TRIGG.

Certificate No. 1095.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of William B. Duncan, John Ker, and Francis Surget, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for the south half of section ten, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the

United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded, Volume 3, page 401.

H. M. GARLAND,
Recorder of the General Land Office.

Filed, 3d January, 1848.

WILLIAM FIELD,
Clerk.
By J. T. TRIGG,
Deputy Clerk.

Certificate No. 1090.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act, making further provision for the sale of the public lands," for fractional section one, in Township eight north, of Range three west, in the District of lands subject to sale at Batesville, Arkansas, containing six hundred and forty-one acres and six hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand
[L. S.] eight hundred and thirty-nine, and of the independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 397.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1130.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th April, 1820, entitled, "An Act making further provision for the sale of the public lands," for the northwest fractional quarter of fractional section five, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing one hundred and sixty-three acres and eighty-two hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, on the first day of October, in the year of our Lord one thou-

[L. S.] sand eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 435.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1131.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for the west half of the northeast quarter of section five, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand
[L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN,
By M. VAN BURLUP.
Secretary.

Recorded Vol. 3, page 436.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1132.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for the north half of section eight, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand
[L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 437.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1133.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for section twenty-nine, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing six hundred and forty acres, according to the official plot of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan: Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[L. S.]

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Volume 3, page 438.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1134.

The United States of America, to all to whom these presents shall come, greeting.

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled. "An act making further provision for the sale of the Public Lands," for the northwest quarter of section nine, in Township eight north, of Range three west, in the district of lands, subject to sale at Batesville, Arkansas, containing one hundred and sixty acres, according to the official plat of the survey of the said Lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

[L. S.]

By the President.

MARTIN VAN BUREN.

By M. VAN BURLUP.

Secretary.

Recorded Volume 3, page 439.

H. M. GARLAND,

Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD.

By J. T. TRIGG.

Certificate No. 1135.

The United States of America, to all to whom these presents shall come, greeting.

Whereas William B. Duncan, in his own right and as assignee of John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the Public Lands," for the southwest qnarter of fractional section four, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing one hundred and sixty acres, according to the official plat of the survey of the said lands, returned to the General Land Office, by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand [L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.
By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 440.

H. M. GARLAND,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

Certificate No. 1137.

The United States of America, to all to whom these presents shall come, greeting:

Whereas William B. Duncan, in his own right, and as assignee of

John Ker, Francis Surget, and Stephen Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for the east half of fractional section two, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing three hundred and eighteen acres and sixty-eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William B. Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William B. Duncan, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the first day of October, in the year of our Lord one thousand [L. S.] eight hundred and thirty-nine, and of the Independence of the United States the 64th.

By the President.

MARTIN VAN BUREN.

By M. VAN BURLUP,
Secretary.

Recorded Vol. 3, page 442.

H. M. GARLAND.

Filed 3d January, 1848.

W. FIELD,
By J. T. TRIGG.

Certificate No. 1093.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Stephen Duncan, in his own right and as assignee of John Ker, Francis Surget, and William Duncan, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Batesville, whereby it appears that

full payment has been made, by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for the south half of section eight, in Township eight north, of Range three west, in the district of lands subject to sale at Batesville, Arkansas, containing three hundred and twenty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said William B. Duncan, John Ker, Francis Surget, and Stephen Duncan. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Stephen Duncan, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Duncan, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the fifth day of September, in the year of our Lord one thousand
[L. S.] eight hundred and forty-two, and of the Independence of the United States the 67th.

By the President.

JOHN TYLER.
By R. TYLER,
Secretary.

Recorded Vol. 4, page 379.

J. WILLIAMSON,
Recorder of the General Land Office.

Filed 3d January, 1848.

WM. FIELD,
By J. T. TRIGG.

The United States of America: Eastern District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States, in and for the Eastern District of Arkansas, do hereby certify, that the foregoing transcript contains a full and complete copy of the record, papers, and proceedings, in the case of Francis Surget against William Byers and Andrew J. Dougherty, as appears now of record in my said office.

In testimony whereof, I have hereto set my hand as Clerk and affixed the seal of said Court, this 12th day of December, A. D. 1855, and the 80th year of American Independence.

Attest, WM. FIELD,
Clerk.

Part of Sections 2, 3, 10 & 11 in T 1 n. R 11 W
S. Arkansas River & West of Louapaw Line

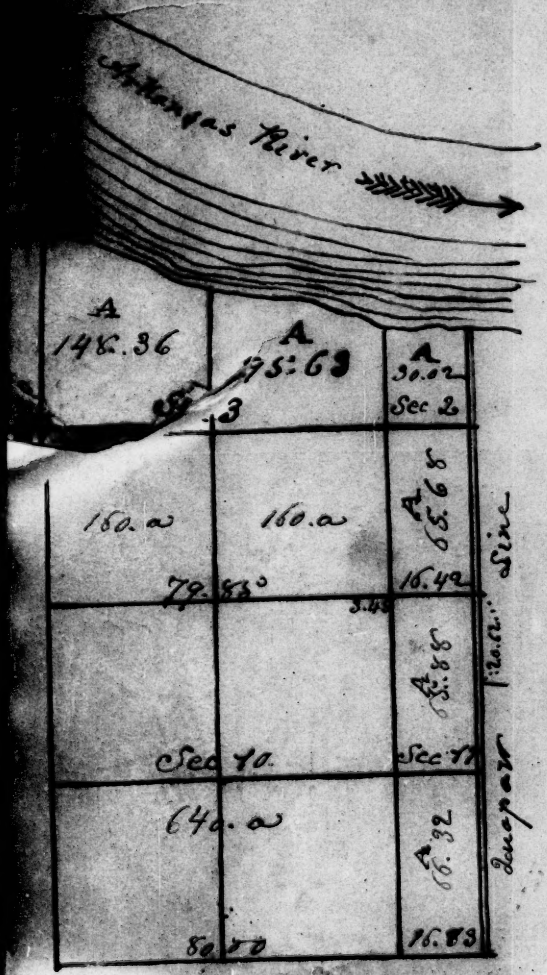

Exhibit M

Russell

vs

Ashley et al.